

**UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF MASSACHUSETTS**

CALAMAR CONSTRUCTION SERVICES, INC.,  
*Plaintiff,*

v.

THE MASHPEE WAMPANOAG VILLAGE LIMITED  
PARTNERSHIP; and RAYMOND JAMES  
AFFORDABLE HOUSING INVESTMENTS, INC.,  
*Defendants.*

No. 1:23-cv-10786-WGY

**DEFENDANT RAYMOND JAMES AFFORDABLE HOUSING  
INVESTMENTS, INC.’S MEMORANDUM OF LAW IN SUPPORT OF  
ITS MOTION TO DISMISS PLAINTIFF’S AMENDED COMPLAINT**

Pursuant to Federal Rule of Civil Procedure 12(b)(6), Defendant Raymond James Affordable Housing Investments, Inc. (“RJ Housing”) respectfully requests that this Court dismiss it from this action with prejudice, for the reasons set forth below.

Plaintiff Calamar Construction Services, Inc. (“Calamar”) was a general contractor on a construction project pursuant to a series of construction services agreements that Calamar entered into with The Mashpee Wampanoag Village Limited Partnership (“Village LP”). RJ Housing, an affiliate of an investor in Village LP, was not a party to those construction contracts, and had no ability to control the conduct of either party to those agreements.

Calamar alleges that it was in a dispute with Village LP’s general partner over the construction agreement, and it asked RJ Housing to advocate with Village LP’s general partner to keep the project moving forward, and RJ Housing agreed to make such requests. See Amended Complaint at ¶¶ 69-83 [Dkt. No. 33] (“Am. Compl.”). Assuming the alleged facts for purposes of this motion, that conduct – agreeing to advocate with the ultimate decision-maker for Calamar’s

desired outcome – does not give rise to tort claims for tortious interference or negligent misrepresentation against RJ Housing. While the outcome of such advocacy may not have ended up where Calamar hoped, RJ Housing’s alleged efforts cannot be tortious. Indeed, as Calamar readily admits, it was already in a contractual dispute with Village LP. RJ Housing’s agreement to work on a go-forward basis **at Calamar’s request** to attempt to broker a future resolution was neither improper interference nor untrue. As such, RJ Housing must be dismissed from this action.

# **I. FACTS AND BACKGROUND**

Defendant Village LP is the leaseholder of the real property located on Meetinghouse Road in Mashpee, Massachusetts. Am. Compl. at ¶¶ 6, 20. The general partner of Village LP is the Mashpee Wampanoag Tribe, a federally recognized Native American tribe (the “Tribe”). *Id.* at ¶ 4. In 2018 and 2021, Village LP entered into construction services agreements with Plaintiff Calamar to build residential housing on the site (hereafter “Construction Contracts”). *Id.* at ¶¶ 15-18.

According to the Amended Complaint, during the course of construction, Calamar and Village LP became involved in multiple disputes concerning a number of discrete construction administration issues. Indeed, the majority of the Amended Complaint’s allegations are based on those issues between Calamar and the Tribe concerning Village LP, including contractual disputes over:

- The approval and timing of payment applications by the architect required under the Construction Contracts (*id.* at ¶ 28);
- Timing of payment under the Construction Contracts (*id.* at ¶ 29);
- Retainage under the Construction Contracts (*id.* at ¶¶ 30-31);
- Changes to the scope of work under the Construction Contracts (*id.* at ¶¶ 33-35);

- The percentage of tribal workers employed at the site, and the quality of construction work performed by those individuals (id. at ¶¶ 37-61); and
- The impact of Covid-19 on project costs (id. at ¶¶ 62-63).

The Amended Complaint does not allege that RJ Housing had control over any of the above events or conduct, as RJ Housing was not a party to the Construction Contracts.

By contrast, RJ Housing facilitates investment in affordable housing projects, and has a principal place of business in Saint Petersburg, Florida. Id. at ¶ 5. One of RJ Housing’s affiliates, RJAHF 11-Wampanoag Village #1 LLC, is the investor limited partner in the partnership named in the litigation, Village LP. Id. at ¶ 4. As the Amended Complaint admits, the purpose of RJ Housing’s affiliate’s involvement in the project was to facilitate participation in the Commonwealth of Massachusetts’ low-income housing tax credit program (“LIHTC”). Id. at ¶¶ 6-9. Notwithstanding its wholly vague and non-specific assertion that RJ Housing’s affiliate took an “active” role in the project (id. at ¶ 11), neither RJ Housing nor its affiliate is the general partner of Village LP with authority to manage the project. Id. at ¶ 4. The Tribe is the general partner with management authority for Village LP, not RJ Housing. Id.

According to the Amended Complaint, Calamar spoke with RJ Housing to discuss Calamar’s disputes with the Tribe relating to the construction of the project. Id. at ¶ 64. The only allegations related to RJ Housing are that RJ Housing engaged in conversations with Calamar in an attempt to resolve Calamar’s ongoing dispute with the Tribe and move the project forward. Specifically, RJ Housing is alleged in the Amended Complaint to have:

- Shared its forward-looking predictions about how the general partner would potentially respond to Calamar’s claims concerning certain cost overruns (id. at ¶¶ 66-67); and

- Offered to “work to resolve the dispute” between Calamar and the general partner (id. at ¶ 68).

The Amended Complaint then engages in threadbare, highly conclusory and speculative “upon information and belief” pleading that:

- RJ Housing “knew” that Calamar would “rely on its statement that [RJ Housing] would resolve the payment dispute” (id. at ¶ 69); and
- RJ Housing somehow “knew” that it would not resolve the payment dispute in the future, and “encouraged” Village LP to “persist in its contractual violations” (id. at ¶¶ 70-71).

Finally, in a feeble effort to address the required element of “motive,” Calamar claims with no facts in support whatsoever that RJ Housing “sought” to have “Calamar continue working . . . without expressing its true motivation.” Id. at ¶ 73.

Thus, according to Calamar’s conclusory assertions, RJ Housing’s very act of trying and failing to broker a resolution among disputants to a construction contract (or any contract), at the request of Calamar to keep the project on track, can lead to civil liability in federal court. This theory is itself without merit because Calamar fails in the Amended Complaint to allege facts:

- that RJ Housing employed either any improper means or any improper motive that would be the basis for a tortious interference claim against RJ Housing;
- that RJ Housing induced Village LP to breach the contract;
- that RJ Housing made any statement that was untrue or that it could have known was untrue; and
- that Plaintiff’s reliance on RJ Housing’s alleged statements were reasonable.

As explained in detail further below, Calamar’s Amended Complaint lacks any specific factual foundation for its naked conclusions, and, therefore, fails to allege claims upon which relief may be granted as to RJ Housing.

## **II. LEGAL STANDARD**

To survive a motion to dismiss, a complaint must contain sufficient factual matter, accepted as true, to “state a claim to relief that is plausible on its face.” Bell Atl. Corp. v. Twombly, 550 U.S. 544, 570 (2007). The Court must accept all factual allegations in the complaint as true and draw all reasonable inferences in the plaintiff’s favor. Tompkins v. United Healthcare of New England, Inc., 203 F.3d 90, 93 (1st Cir. 2000) (citation omitted); Langadinos v. American Airlines, Inc., 199 F.3d 68, 69 (1st Cir. 2000). Notably, the First Circuit explained “that the rote recital of the elements of a cause of action is not enough, by itself, to nudge a case past the plausibility threshold.” A.G. ex rel. Maddox v. Elsevier, Inc., 732 F.3d 77, 81 (1st Cir. 2013).

Courts apply a two-pronged test in deciding a motion to dismiss under Rule 12(b)(6). See id. at 80 (citation omitted). First, a court “‘must separate the complaint’s factual allegations (which must be accepted as true) from its conclusory legal allegations (which need not be credited).’” Id. (quoting Morales-Cruz v. Univ. of P.R., 676 F.3d 220, 224 (1st Cir. 2012)). “When allegations, though disguised as factual, are so threadbare that they omit any meaningful factual content, [the court] will treat them as what they are: naked conclusions.” Id. at 81 (citations omitted). Second, “the court must determine whether the remaining factual content allows a ‘reasonable inference that the defendant is liable for the misconduct alleged.’” Id. at 80 (quoting Morales-Cruz, 676 F.3d at 224).

### III. ARGUMENT

#### A. COUNT FOUR SHOULD BE DISMISSED BECAUSE IT FAILS TO PLAUSIBLY ALLEGE THAT RJ HOUSING TORTIOUSLY INTERFERED WITH A CONTRACTUAL RELATIONSHIP.

As this Court previously explained, “[t]here are four elements that must be proven to prevail on a claim of tortious interference with contractual and advantageous relations. A plaintiff must demonstrate (1) that he had a contract with a third party; (2) the defendant knowingly induced the third party to break the contract; (3) the defendant’s interference was improper in motive or means; and (4) the plaintiff was harmed by the defendant’s actions.” TalentBurst, Inc. v. Collabera, Inc., 567 F. Supp. 2d 261, 267 (D. Mass. 2008) ((citing Network Sys. Architects Corp. v. Dimitruk, No. 06-4717, 2007 WL 4442349, at \*9 (Mass. Super. 2007) (Fabricant, J.)).

While the question whether there was any breach of the contract at all will surely be contested by the contractual counterparties in this litigation, there is simply no credible allegation to support the claim against RJ Housing for tortious interference, because Calamar failed to plead the required elements of (i) improper motive or means, and (ii) inducing a breach of contract.

##### *1. Calamar Must Plead Improper Means or Motive.*

Importantly, “[i]mproper” requires “something more than intentional interference,” Hamann v. Carpenter, No. 17-11292, 2018 WL 2012689, at \*2 (D. Mass. Apr. 30, 2018) (quoting United Truck Leasing Corp v. Geltman, 551 N.E.2d 20, 23 (Mass. 1990)), and a plaintiff “must demonstrate wrongfulness beyond the interference itself.” James L. Minter Ins. Agency, Inc. v. Ohio Indemnity Co., 112 F.3d 1240, 1250 (1st Cir. 1997).

Assuming for purposes of this motion to dismiss that the non-factual conclusions asserted against RJ Housing could show any interference (there was none), the operative question is then whether the interference occurred with improper means or motive. Hamann, 2018 WL 2012689, at \*2. Calamar fails to sufficiently plead either. As this Court explained in Talentburst, a claim

for tortious interference must be dismissed if a “complaint does not put forth any factual allegations from which it could be concluded that [a defendant] relied upon improper means or motive in interfering with the relationship between” the contractual counterparties. 567 F. Supp. 2d at 268.

*2. Calamar Fails to Plead Any Improper Means.*

The gravamen of Calamar’s tortious interference claim is that RJ Housing offered to advocate for Calamar’s desired outcome with the general partner, yet did not ultimately succeed in brokering a resolution. The threadbare, paltry allegations asserted in the Amended Complaint are a far cry from the types of “means” that have been found improper in cases in this judicial district and the Commonwealth, such as when a party misappropriates trade secrets (see Biopoint Inc v. Dickhaut, No. 20-10118, 2021 WL 4311651, at \*4 (D. Mass. Sept. 22, 2021)); when a party uses stolen property to solicit business and harm the plaintiff (see People’s Choice Mortg., Inc. v. Premium Cap. Funding, LLC, No. 06-3958, 2010 WL 1267373, at \*16 (Mass. Super. Mar. 31, 2010)); where a party fabricated grounds for termination of a construction contract (see Barr Inc. v. Studio One, Inc., 146 F. Supp. 3d 375, 382 (D. Mass. 2015)); or a showing that the defendant violated a statute or common law precept (see Melo-Tone Vending, Inc. v. Sherry, Inc., 39 Mass. App. Ct. 315, 320 (1995) (paying to have competing vending machines unlawfully removed from premises)).

If anything, rather than interfere with the Construction Contracts, RJ Housing’s alleged conduct amounts to an attempt to advance the purpose of the Construction Contracts by attempting to resolve a dispute among the counterparties to further the mutual goal of completing the project as expeditiously as possible. RJ Housing’s means may not have succeeded; however, its alleged conduct cannot be enough to sufficiently allege the kind of “wrongfulness” necessary to support tortious interference. James L. Minter Ins. Agency, 112 F.3d at 1250.

3. *Calamar Fails to Plead Any Improper Motive.*

“Improper motive” has been characterized as “‘actual malice,’ i.e., a ‘spiteful, malignant purpose, unrelated to the legitimate corporate interest.’” Brewster Wallcovering Co. v. Blue Mountain Wallcoverings, Inc., 864 N.E.2d 518, 541 (Mass. App. Ct. 2007) (quoting Shea v. Emmanuel Coll., 682 N.E.2d 1348, 1351 (Mass. 1997)).

Far from actual malice or spitefulness, the allegations asserted in the Amended Complaint make clear that RJ Housing’s motive in responding to **Calamar’s request** for RJ Housing’s intervention was to prevent further delay of the project and to work toward the project’s financial success. See Am. Compl. at ¶ 64. That purpose no doubt benefits Calamar as well, and surely is related to the legitimate corporate interest. Indeed, the only allegation that arguably attempts to address motivation does not meet the applicable standard for constituting malice-driven improper motive: “[RJ Housing] was concerned that its affiliate, RJAHF 11, would not receive the LIHTCs if the Project was not put into service by the end of the year and therefore sought to have Calamar continue working even without full payment to meet the LIHTC deadline (without expressing its true motivation).” Id. at ¶ 73. Instead, this allegation sets out a motive geared toward legitimate financial interest in the success of the project so that it could utilize, and not waste, the operative tax credit benefits. Id. As this Court has explained, “[a]dvancement of one’s economic interest, however, is not an improper motive.” Talentburst, 567 F. Supp. 2d at 269 (citing United Truck Leasing Corp. v. Geltman, 406 Mass. 811, 817 (1990)); see also Pembroke Country Club, Inc. v. Regency Savings Bank, F.S.B., 62 Mass. App. Ct. 34, 39 (Mass. App. Ct. 2004) (a “legitimate advancement of [defendant’s] own economic interest” does not constitute an improper motive);



Brewster Wallcovering Co. v. Blue Mountain Wallcoverings, Inc., 864 N.E.2d at 541 (improper motive is one “unrelated to the legitimate corporate interest”).

Calamar also makes the bald statement that “[t]he interference was done with deliberate purpose of depriving Calamar of contractually merited funds” (Am. Compl. at ¶ 127), yet this conclusory allegation is merely a rote repetition of the claim’s element with no actual facts to support it and cannot be credited. A.G. ex rel. Maddox, 732 F.3d at 81. Once again, RJ Housing’s efforts had a legitimate corporate interest – to complete the project efficiently and on time – which interest is not improper or malicious motive.

#### *4. Calamar Fails to Plead Inducement.*

As stated above, to prove tortious interference, Calamar must also allege that RJ Housing knowingly induced Village LP to breach the contract with Calamar. TalentBurst, 567 F. Supp. 2d at 267. For a number of reasons, Calamar’s allegations miss the mark on this critical element.

First, Calamar’s speculative theory is not plausible, and therefore cannot satisfy its obligation to support a cognizable claim. According to the Restatement (Second) of Torts, the word “‘inducing’ refers to the situations in which [the defendant] causes [the third party who is in breach] to choose one course of conduct rather than another,’ and includes ‘any intentional causation whether by inducement or otherwise.’” Schwan’s Sales Enterprises, Inc. v. Commerce Bank & Tr. Co., 397 F. Supp. 2d 189, 198 (D. Mass. 2005) (quoting Restatement (Second) of Torts § 766, cmt. h (1979)). Here, Calamar alleges that RJ Housing “improperly interfered with the relationship by, among other actions, encouraging the Village LP to breach the Contract and Secondary Contract or to insist on employment of tribal workers notwithstanding the contractual requirements.” Am. Comp. at ¶ 124. Beyond this threadbare statement, Calamar offers no actual facts to support this highly implausible conclusion. Yet, at the same time Calamar also alleges

that **Village LP had already refused to agree with Calamar** on the disputed issue of tribal workers, such that it was not RJ Housing's interference that allegedly induced Village LP to take the position it took. Instead, the alleged breach was simply a preexisting, ongoing dispute directly between Calamar and Village LP over this and other issues in the contract.<sup>1</sup>

Indeed, under the Amended Complaint's own telling, Village LP had already "refused to either reduce the number of tribal workers being sent to the site or to provide extra compensation to Calamar to reimburse the inflated labor costs" well before Calamar's entreaties to RJ Housing to ask Village LP to change course. *Id.* at ¶ 58. Even RJ Housing's alleged "encouragement" is described as having occurred when Village LP was, of its own accord, already "persisting" in the course of action: "Upon information and belief, Raymond James instead encouraged the Village LP **to persist** in its contractual violations with regard to the TERO dispute." *Id.* at ¶ 71 (emphasis added).

Second, the Amended Complaint never squarely alleges that RJ Housing actually induced Village LP to breach the Contract at all, but instead vaguely refers to RJ Housing "encouraging" Village LP "to breach the Contract and Secondary Contract or to insist on employment of tribal workers notwithstanding the contractual requirements." *Id.* at ¶ 124. But encouraging an alternative outcome is not "inducement," especially when the party is **already taking the action that is theoretically to be induced**. Because Calamar does not plausibly allege that RJ Housing induced Village LP to take the alleged actions to breach the Contract, its count for tortious interference cannot survive. *Med. Air Tech. Corp. v. Marwan Inv., Inc.*, 303 F.3d 11, 22 (1st Cir. 2002) ("Without causation, there can be no claim for tortious interference.") (citation omitted).

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<sup>1</sup> To be clear, RJ Housing does not accept or argue here that Village LP breached, and makes no such concession in this motion.

Indeed, even in cases with specific threats of definitive financial consequences, such conduct was found to not rise to the level of “inducement” for purposes of a tortious interference claim. In Schwan’s Sales Enterprises, a bank promised to “choke” one of its banking customers by demanding certain loans be repaid if that customer did not agree to follow its advice, but the court found that because the bank was asserting its contractual rights, those comments did not constitute inducement. 397 F. Supp. 2d at 200. Here, there are no allegations that RJ Housing made any threats or engaged in anything that could rise to the level of inducing Village LP to breach the contract. As previously addressed, Calamar merely alleges that RJ Housing pursued its business interests to move the housing project forward so it could be completed and the tax credits utilized.

**B. COUNT FIVE SHOULD BE DISMISSED BECAUSE IT FAILS TO ALLEGE ANY NEGLIGENT MISREPRESENTATION BY RJ HOUSING.**

To prove a claim for negligent misrepresentation, a plaintiff must show that the defendant “(1) in the course of its business, (2) supplied false information for the guidance of others (3) in their business transactions, (4) causing and resulting in pecuniary loss to those others (5) by their justifiable reliance upon the information, and (6) that it failed to exercise reasonable care or competence in obtaining or communicating the information.” Cummings v. HPG Int’l, Inc., 244 F.3d 16, 24 (1st Cir. 2001) (citations omitted); see also Coulsey v. Option One Mortg. Corp., No. 15-10471, 2015 WL 13766633, at \*8 (D. Mass. Dec. 16, 2015) (citations omitted).

*1. Calamar Fails to Plead Falsity.*

The Amended Complaint is bereft of factual allegations as to RJ Housing’s purported misrepresentation. The allegation that RJ Housing “provided false information to Calamar when it stated that **it would work** with the Village LP and resolve the outstanding payment dispute

between Calamar and the Village LP” is on its face deficient, because it is a forward-looking statement about the future, and not a statement of fact. Am. Compl. at ¶ 132 (emphasis added).

It is black letter law that statements of opinion or judgment relating to future events, including promises to act, are not actionable as misrepresentations. Cumis Ins. Soc’y, Inc. v. BJ’s Wholesale Club, Inc., 455 Mass. 458, 474 (2009) (“Moreover, ‘false statements of opinion, of conditions to exist in the future,’ and promises to perform an act cannot sustain a claim for negligent misrepresentation”) (quoting Yerid v. Mason, 341 Mass. 527, 530 (1960)); see also Barden v. Harpercollins Publishers, Inc., 863 F. Supp. 41, 43 (D. Mass. 1994) (citation omitted).

Moreover, as noted in a recent case in this district involving a banker who gave false information to a customer that their funds were allegedly “locked down” and “secured” before the customer subsequently incurred hundreds of thousands in losses, the falsity of the statements must be “specific and verifiable, not a mere expression of opinion or estimate.” Ferrante v. Santander Bank, N.A., 680 F. Supp. 3d 52, 60 (D. Mass. 2023) (internal quotations and citation omitted). Here, the Amended Complaint gives no such specific or verifiable information about any such statements.

More specifically, the Amended Complaint does not – because it cannot – claim that RJ Housing did not in fact, “work with the Village LP” to attempt to resolve the dispute. Calamar acknowledges that RJ Housing did in fact advocate for the position advanced by Calamar, but those efforts, much like those of Calamar itself, did not convince the general partner of the views Calamar sought to advance. As such, even assuming the allegations for purposes of this motion, RJ Housing’s alleged statements to work with Village LP to attempt to resolve the dispute would be true, and cannot support the misrepresentation claim.

The closest Calamar comes to identifying a specific statement is its claim that RJ Housing told Calamar that the general partner “would insist upon TERO workers” in certain circumstances and “would accept change orders for cost overruns under certain conditions.” Am. Compl. at ¶¶ 66-67. But these non-specific, uncertain statements are unrealized projections about which future negotiation positions would be taken by the ultimate decision-maker, and there is no allegation that any of that information expressed by RJ Housing was false, fabricated, or in any way, incorrect. Indeed, there is no reasonable assertion that it was not true, as there is no certainty or specificity in the statement that the general partner would accept changes “under certain conditions.” Those “certain conditions” leave significant room for interpretation by the general partner and most certainly cannot be determined to be untrue. Moreover, the fact that those representations relating to future efforts did not ultimately succeed in persuading the decision-maker does not retroactively convert those statements into negligent misrepresentations. Dobelle v. Flynn, 12 F. Supp. 3d 274, 295 (D. Mass. 2014) (granting motion to dismiss negligent misrepresentation claim) (“Simply labeling something a misrepresentation, let alone a negligent misrepresentation, does not make it so.”).

## *2. Calamar Fails to Plead Justifiable Reliance.*

A claim for negligent misrepresentation also must be dismissed if it fails to plead either privity between the parties, or actual knowledge by the defendant of the plaintiff’s reliance on the misrepresentations. Van de Velde v. Coopers & Lybrand, 899 F. Supp. 731, 739 (D. Mass. 1995) (citations omitted); Rand v. Cullinet Software, Inc., 847 F. Supp. 200, 214 (D. Mass. 1994) (citations omitted). There is no allegation of privity in the Amended Complaint, and “[a]bsent such privity, the plaintiff must prove that the defendant had actual knowledge of plaintiff’s reliance.” Steiner v. Unitrode Corp., 834 F. Supp. 40, 46 (D. Mass. 1993) (citing Hurley v. Federal

Deposit Ins. Corp., 719 F. Supp. 27, 34 (D. Mass. 1989)) (further citation omitted); Page v. Frazier, 388 Mass. 55, 64-65 (1983); In re Bank of Boston Corp. Securities Litigation, 762 F. Supp. 1525, 1536 (D. Mass. 1991) (citation omitted).<sup>2</sup>

The only claim of RJ Housing’s knowledge of Plaintiff’s purported reliance is the highly conclusory allegation that “[u]pon information and belief, Raymond James knew its statements were false when they were made and made the statements with the intent to cause Calamar to rely upon them.” Am. Compl. at ¶ 135. Calamar backs up this bald assertion with no facts whatsoever, and Calamar’s own unsupported conclusion should not be credited. Because it is not an allegation of fact, and instead merely Calamar’s threadbare recitation of an element of the claim, it fails to meet the standard necessary to support a claim. Morales-Cruz v. Univ. of P.R., 676 F.3d at 224, 227 (finding allegations insufficient where they are threadbare allegations that omit any meaningful factual content). Further, this allegation fails because the statements made were not “false when made,” because, as noted above, they concerned a future condition and RJ Housing could not have induced Calamar to rely on a statement when the results of its efforts had not yet occurred. Indeed, it would not be reasonable for Calamar to expect that RJ Housing’s statement – that it **would work in the future** on the issues sought by Calamar – meant that RJ Housing already knew it could and would convince Village LP to change its position and accommodate Calamar’s issues. If Calamar had such a belief, it was plainly unjustified and not reasonable, and more supportive facts for such belief must be pleaded to show otherwise. Brenner v. Metro. Life Ins. Co., No. 11-12096, 2013 WL 1337367, at \*1 (D. Mass. Mar. 29, 2013) (citations omitted)

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<sup>2</sup> Calamar seems to suggest some level of privity in its prayer in the alternative, which claims that RJ Housing made statements “without exercising reasonable care or competence in determining whether the statements were true and likely to occur” (Am. Compl. at ¶ 136), but there is no duty of care or competence owed by RJ Housing to Calamar.

(“Massachusetts law requires a showing of justifiable reliance to prevail on a claim for negligent misrepresentation”) (negligent misrepresentation count dismissed); Hallmark Inst. of Photography, Inc. v. CollegeBound Network, LLC, 518 F. Supp. 2d 328, 332 & n.2 (D. Mass. 2007) (citations omitted) (“Where a statement is of a ‘fundamentally predictive nature,’ a defendant cannot be said to be making a representation regarding any present fact that the plaintiff can then reasonably rely on. [...] The general exemption of representations regarding the future in part reflects the difficulty such statements create in weighing the ‘reasonable reliance’ element of misrepresentation claims.”) (dismissing negligent misrepresentation count).

Finally, as is the case here, there are circumstances in which “‘a plaintiff’s reliance on oral statements in light of contrary written statements is unreasonable as a matter of law.’” Samia Companies LLC v. MRI Software LLC, 898 F. Supp. 2d 326, 343 (D. Mass. 2012) (quoting Marram v. Kobrick Offshore Fund, Ltd., 442 Mass. 43, 59 (2004)). Here, Plaintiff’s reliance upon and understanding of its performance obligations arose from the written statements memorialized in the Construction Contracts, not on RJ Housing’s apparently oral offer to help advance an interpretation of such Construction Contracts. That is particularly so as to the allegation that “Calamar justifiably relied on Raymond James’s statements in continuing to work on the Project, to its pecuniary detriment” (Am. Compl. at ¶ 134), because Calamar, a national construction firm, was fully aware of the consequences of continuing to work as set forth in the Construction Contracts. The Amended Complaint does not suggest that RJ Housing ever claimed to have superseded the rights or obligations in those contractual agreements (as a non-party, it could not have reasonably done so), does not claim that RJ Housing stated any incorrect or false fact about Calamar’s obligations under those documents, or in any other way caused Calamar to believe that somehow it was not bound by the Construction Contracts.

With no valid negligent misrepresentation identified, and certainly none properly pleaded, this count fails as a matter of law.

**IV. CONCLUSION**

Calamar has not properly pleaded any viable cause of action as to RJ Housing. Because the Amended Complaint does not identify any conduct by RJ Housing that could subject it to liability as a matter of law, RJ Housing respectfully requests that this Court dismiss all counts against it with prejudice, and grant it such other relief as this Court deems appropriate.

Respectfully Submitted,

**RAYMOND JAMES AFFORDABLE  
HOUSING INVESTMENTS, INC.,**

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Dated: May 24, 2024

**CERTIFICATE OF SERVICE**

I hereby certify that on May 24, 2024, a true copy of the above document was served upon counsel of record via ECF.

/s/ Ronaldo Rauseo-Ricupero

Ronaldo Rauseo-Ricupero