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Case No. 2023-0557-PAF

IN THE COURT OF CHANCERY OF THE STATE OF DELAWARE

SYBIL POTTS and WILLIAM BROWN, Plaintiffs, v. SYFS INTERMEDIATE HOLDINGS, LLC, JOHN F. RIPLEY, JOHN STUPAK, CHRISTOPHER ROUSSOS, CHARLES FARKAS, MELISSA FRANCIS, JASON FRIEDRICHS, CASEY LYNCH, JEROME RHODES, and ALTAMONT CAPITAL PARTNERS, Defendants.	)	C.A. No. 2023-0557-PAF

ORDER ADDRESSING
MOTIONS TO DISMISS

WHEREAS:[1]

A. Non-party Sequel Youth & Family Services, LLC and its affiliates (collectively "Sequel Youth") is a Delaware limited liability company.[2] Sequel

[1] Citations to the docket in this action are in the form of "Dkt. [#]." In citations, the Complaint in this action, Dkt. 1, will be cited as "Compl.," and citations to the transcript of the oral argument, Dkt. 41, will be cited as "Oral Argument." After being identified initially, individuals are referenced herein by their surnames without regard to formal titles such as "Dr." No disrespect is intended.

[2] Compl. ¶ 25.

Youth provides behavioral healthcare to children, adolescents, and adults.[3] Defendant John F. Ripley co-founded Sequel Youth in 1999.[4]

B. In 2017, Ripley sold a controlling stake in Sequel Youth to Altamont Capital Partners ("Altamont") in a transaction that valued Sequel Youth at approximately $240 million (the "Altamont Transaction").[5] As part of the Altamont Transaction, equity owners of Sequel Youth became minority owners of Defendant SYFS Intermediate Holdings LLC ("SYFS" or the "Company").[6] The Company owns all of the equity in Sequel Youth.[7]

C. Plaintiffs Sybil Potts and William Brown have held Class B units of SYFS continuously since the Altamont Transaction.[8] Potts is the former CFO to Sequel Youth, and Brown is an attorney at the BrownWinick Law Firm, which provided legal services to Sequel Youth and SYFS.[9]

D. As part of the Altamont Transaction, SYFS adopted a Second Amended and Restated Limited Liability Company Agreement (the "Operating

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[3] *Id.* ¶¶ 1, 28.

[4] *Id.* ¶¶ 15, 25.

[5] *Id.* ¶¶ 1, 15.

[6] *Id.* ¶ 14.

[7] *Id.*

[8] *Id.* ¶¶ 12–13, 44. Plaintiffs seek to bring this action individually and as a class on behalf of other holders of Class B units. *Id.* ¶ 64.

[9] *Id.* ¶¶ 12–13.

Agreement").[10] Pursuant to the Operating Agreement, SYFS is managed by a board of managers (the "Board").[11] Under the Operating Agreement the managers owe "no fiduciary duties (including duties of care and loyalty) to the Company and the Members,"[12] but the Operating Agreement does not, as recognized by the Delaware Limited Liability Company Act (the "LLC Act"), eliminate the implied contractual covenant of good faith and fair dealing.[13]

E. Section 8.12 of the Operating Agreement provides Class B unitholders with a put right, which allows them to exchange their units at any time following the

[10] *Id.* ¶ 45; Dkt. 21 Ex. A [hereinafter "Operating Agreement"]. Apparently, the Operating Agreement was amended and superseded on April 7, 2020. *See* Defs.' Opening Br. 5 n.2; Oral Argument at 32:6–10 (Pls.' Counsel) ("We learned that through the opening brief, Your Honor, through a footnote. Defendants don't dispute that the provisions that we have identified carry over or were somehow removed. But I don't have that."). Neither party has submitted the operative agreement. The parties have proceeded as though the relevant provisions of the operative agreement are unchanged from the prior version of the agreement that was submitted in this action, and the court will do the same.

[11] Operating Agreement Art. IV § 4.1. "'Manager' shall mean each of the managers of the Board designated pursuant to Section 4.1 or any other Person(s) that succeed any of them as a Manager of the Company, each in his, her or its capacity as a manager of the Company. Each Manager is hereby designated as a 'manager' of the Company within the meaning of the [LLC] Act." *Id.* Art. I § 1.1(61).

[12] *Id*. Art. IV § 4.5(a). "'Member' and collectively, 'Members', means each Person admitted as a Class A Member, Class B Member or Class P Member as of the date hereof, together with each Person who may be admitted as an additional or substitute member of the Company pursuant to the provisions of this Agreement, each in his, her or its capacity as a Member of the Company." *Id*. Art. I § 1.1(63).

[13] *See id*. Art. IV § 4.5(a); 6 *Del. C.* § 18-1101(c).

one-year anniversary of the closing of the Altamont Transaction for a price determined by application of a specific formula (the "Put Right").[14]

F. Section 6.6(b) of the Operating Agreement establishes the "order and priority" for "all distributions" to the Members: "First, one hundred percent (100%) to the Class A Members, pro rata in accordance with unreturned Capital Contributions of such Members"; "Second, one hundred percent (100%) to the Class B Members, pro rata in accordance with unreturned deemed Capital Contributions of such Members"; and "Third, one hundred percent (100%) to the Class A Members, the Class B Members and the Class P Members, in proportion to the relative number of Class A Units, Class B Units and Class P Units, respectively, held by each such Member."[15]

G. Following the Altamont Transaction, public media reports raised concerns over the Company's business practices, and the Company's practices became the focus of a congressional investigation in July 2022.[16]

H. In March 2022, SYFS distributed a notice to unitholders (the "Notice"), indicating that the Company was facing "significant challenges" and "other pressures" and informing unitholders of two transactions.[17] The Notice stated that

[14] Operating Agreement Art. VIII § 8.12.

[15] *Id.* Art. VI § 6.6(b) (emphasis omitted).

[16] Compl. ¶ 52.

[17] *Id.* ¶¶ 53, 56. The Notice is not in the record.

Ripley, through his acquisition vehicle Vivant Behavioral Healthcare, LLC ("Vivant"), had purchased a majority of Sequel Youth's residential programs (the "Asset Sale").[18] Plaintiffs allege, on information and belief, that the purchase price was "no more than $5 million."[19] The Notice also stated that SYFS had engaged in a recapitalization, under which some outstanding debt obligations had been converted to equity and Sequel Youth took on $8 million in new debt (the "Recapitalization").[20]

I. On May 24, 2023, Plaintiffs filed the Complaint in this action against SYFS, Ripley, John Stupak, Christopher Roussos, Charles Farkas, Melissa Francis, Jason Friedrichs, Casey Lynch, Jerome Rhodes, and Altamont. The individual

[18] *Id.* ¶ 54. Plaintiffs' allegations regarding the Asset Sale are vague. Plaintiffs allege only that SYFS sold Ripley "a majority of its residential programs" "based on information and belief" "for no more than $5 million." *Id.* But Plaintiffs do not allege how many of these programs SYFS sold, what percentage of the Company's assets they represented, or what Plaintiffs believe their true value is, other than that $5 million "is believed to be significantly below market value." *Id.*; *cf. id.* ¶ 28 ("Sequel Youth 'successfully diversified into a full-spectrum service offering – including 44 programs across three primary program types: i) residential treatment centers ['RTCs'], ii) intensive treatment programs and iii) community-based services ['CBS'].' Sequel had 'programs span across 19 states, serving approximately 9,000 children, adolescents and adults annually from 42 states and U.S. territories.' Company's residential and intensive programs grew to a 'total bed capacity of approximately 2,600,' and its eight CBS programs 'served approximately 6,500 individuals' at its peak." (alterations in original)). Plaintiffs' comparison of this ambiguous grouping of unspecified assets to the $240 million enterprise value assigned to all of SYFS in 2017 lacks support. *See id.* ¶ 54. Nevertheless, this disparity is not pertinent to the issues to be decided on this motion.

[19] *Id.* ¶ 54.

[20] *Id.* ¶¶ 57–58.

defendants are all alleged to have served as members of the Board during the relevant time period.[21] The Complaint asserts claims for breach of contract, breach of the implied covenant of good faith and fair dealing, unjust enrichment, and civil conspiracy.[22] The Defendants filed motions to dismiss, which the parties briefed and on which the court heard oral argument on May 2, 2024.[23]

NOW, THEREFORE, the court having carefully considered Defendants' motions to dismiss, IT IS HEREBY ORDERED, this 21st day of August, 2024, as follows:

1. On a motion to dismiss for failure to state a claim under Court of Chancery Rule 12(b)(6):

> (i) all well-pleaded factual allegations are accepted as true; (ii) even vague allegations are well-pleaded if they give the opposing party notice of the claim; (iii) the Court must draw all reasonable inferences in favor of the non-moving party; and [(iv)] dismissal is inappropriate unless the plaintiff would not be entitled to recover under any reasonably conceivable set of circumstances susceptible of proof.

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[21] Ripley, Stupak, Farkas, Francis, Friedrichs, Lynch, and Rhodes were appointed as members of the board in connection with the closing of the Altamont Transaction and served through the date of the Asset Sale and Recapitalization. *See id*. ¶¶ 15–16, 18–22; Operating Agreement Art. IV § 4.1(a). Farkas, Francis, Friedrichs, Lynch, and Rhodes are all affiliated with Altamont. *See* Compl. ¶¶ 18–22. Roussos is also alleged to have served on the board during this period. *Id*. ¶ 17. In addition to his board service, Roussos was the CEO of Sequel Youth from April 2019 to July 2020. *Id*. Stupak served as Chairman of Sequel Youth from April 2019 to September 2021. *Id*. ¶ 16. He also held other positions at Sequel Youth prior to that time. *Id*.

[22] The Plaintiffs have pleaded every count "Against All Defendants." Compl. at 34, 36–37.

[23] Dkts. 12, 14–15, 21, 31, 33, 40.

Savor, Inc. v. FMR Corp., 812 A.2d 894, 896–97 (Del. 2002) (footnotes and internal quotation marks omitted); *accord Cent. Mortg. Co. v. Morgan Stanley Mortg. Cap. Hldgs. LLC*, 27 A.3d 531, 536 (Del. 2011). "[A] trial court is required to accept only those 'reasonable inferences that logically flow from the face of the complaint' and 'is not required to accept every strained interpretation of the allegations proposed by the plaintiff.'" *In re Gen. Motors (Hughes) S'holder Litig.*, 897 A.2d 162, 168 (Del. 2006) (quoting *Malpiede v. Townson*, 780 A.2d 1075, 1083 (Del. 2001)). "Moreover, a claim may be dismissed if allegations in the complaint or in the exhibits incorporated into the complaint effectively negate the claim as a matter of law." *Malpiede*, 780 A.2d at 1083.

2. Count I alleges that Defendants breached Section 7.2 of the Operating Agreement.[24] Delaware's LLC law is "contractarian, and fundamentally regards and enforces the limited liability company agreement as a contract." *In re Coinmint, LLC*, 261 A.3d 867, 890 (Del. Ch. 2021) (footnote and internal quotation marks omitted). As such, "the limited liability company agreement serves as the primary source of rules governing the affairs of a limited liability company and the conduct of its business." *Id.* at 889–90 (internal quotation marks omitted). "If the [Operating

[24] Compl. ¶¶ 73–81; Pls.' Answering Br. 24–30. Plaintiffs also argue that Defendants' alleged breach of Section 7.2 "impaired" Plaintiffs' Put Right. Compl. ¶ 80. Plaintiffs do not, however, argue that Defendants breached Section 8.12.

Agreement] covers the issue, the agreement controls unless it violates one of the [LLC Act's] mandatory provisions. If the agreement is silent, then the Court must look to the [LLC Act] to see if one of its default provisions apply." *Holifield v. XRI Inv. Hldgs. LLC*, 304 A.3d 896, 923 (Del. 2023) (internal quotation marks omitted). Thus, where the agreement does not address an issue, "the Act provides default and gap-filling provisions." *Coinmint*, 261 A.3d at 889–90.

3. "Delaware adheres to the 'objective' theory of contracts, *i.e.* a contract's construction should be that which would be understood by an objective, reasonable third party." *Osborn ex rel. Osborn v. Kemp*, 991 A.2d 1153, 1159 (Del. 2010) (internal quotation marks omitted). "Unless there is ambiguity, Delaware courts interpret contract terms according to their plain, ordinary meaning." *Daniel v. Hawkins*, 289 A.3d 631, 645 (Del. 2023) (internal quotation marks omitted). "A contract is not rendered ambiguous simply because the parties do not agree upon its proper construction. Rather, a contract is ambiguous only when the provisions in controversy are reasonably or fairly susceptible of different interpretations or may have two or more different meanings." *Rhone-Poulenc Basic Chems. Co. v. Am. Motorists Ins. Co.*, 616 A.2d 1192, 1196 (Del. 1992).

4. Section 7.2 is titled Appointment of Auditors[25] and states:

[25] *See* Operating Agreement Art. XII § 12.12 ("Headings. Section and other headings contained in this Agreement are for reference purposes only and are not intended to

> The Company will retain the Auditors to review, audit and report to the Members upon the financial statements of the Company for and as of the end of each Fiscal Year. The Auditors may be replaced or new auditors may be appointed at the discretion of the Board.[26]

5. Plaintiffs argue that Section 7.2 created an affirmative obligation for Defendants to provide Plaintiffs with audited annual financial statements for each fiscal year.[27] Plaintiffs allege that "Defendants have not provided Plaintiffs and the Class any audited annual financial statements for any fiscal year since the Closing of the Altamont Transaction."[28] Plaintiffs also allege that Defendants' failure to deliver annual audited financial statements impaired Plaintiffs' ability to exercise their rights under Section 8.12 before the Asset Sale and Recapitalization.[29]

6. Defendants argue this claim must be dismissed for two reasons. First, Defendants argue that the claim must be dismissed against all Defendants because Section 7.2 only obligates SYFS to retain auditors, not to deliver financial statements

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describe, interpret, define or limit the scope or intent of this Agreement or any provision hereof.").

[26] *Id.* Art. VII § 7.2. The only other reference to Section 7.2 in the Operating Agreement is in Section 1.1(10), which defines "Auditors" as "such firm of certified accountants as shall be appointed from time to time pursuant to Section 7.2 as auditor of the Company." In turn, the only other references to Auditors in the Operating Agreement are found in Section 7.2. Section 1.1(48) states that "'Fiscal Year' has the meaning set forth in Section 2.10," which, in pertinent part, defines Fiscal Year such that the "fiscal year of the Company for financial reporting purposes shall be the year ending June 30." Like "Auditors," "Fiscal Year" is also only used in Section 7.2.

[27] Compl. ¶¶ 76, 78–79.

[28] *Id.* ¶ 78.

[29] *Id.* ¶ 80.

to unitholders. Second, Defendants argue that to the extent there is any obligation owed under Section 7.2, only the Company owes it. Thus, Defendants contend, Count I must be dismissed against all of the other Defendants because they owe no contractual obligation under Section 7.2.

7. "A plaintiff only can assert a breach of contract claim against a party that owed the pertinent obligation under the agreement." *In re P3 Health Gp. Hldgs., LLC*, 2022 WL 16548567, at *11 (Del. Ch. Oct. 31, 2022). Section 7.2 does not require the individual defendants or Altamont to take any action. Therefore, they cannot be liable for any breach of Section 7.2. *See CMS Inv. Hldgs., LLC v. Castle*, 2015 WL 3894021, at *13 (Del. Ch. June 23, 2015) (holding that members who were parties to a limited liability company agreement and thus bound by it could not be sued for breach of obligations that did not apply to them).[30] Therefore, Count I is dismissed as to the individual defendants and Altamont because Section 7.2 does not impose any obligation upon them.

8. Plaintiffs' remaining argument in support of Count I fares no better. Plaintiffs mainly rely upon *Bean v. Fursa Capital Partners, LP*, where this court

[30] Plaintiffs offer no meaningful response to Defendants' argument. Rather, Plaintiffs merely point to Section 10.1, which provides for exculpation of, among others, Members and Managers, and states that the Operating Agreement does not eliminate liability for breach of contractual obligations or breach of the implied covenant of good faith and fair dealing. Pls.' Answering Br. 30; *see* Operating Agreement Art. X § 10.1. But Plaintiffs' reliance on Section 10.1 misses the mark, as Section 10.1 does not impose any contractual obligation on the individual defendants or Altamont with respect to Section 7.2.

found that a limited partnership agreement required its general partner to send information to limited partners periodically. 2013 WL 755792 (Del. Ch. Feb. 28, 2013).[31] In *Bean*, the limited partnership agreement expressly stated that the general partner "shall prepare annual financial statements of the Partnership, and shall mail a copy of such statements to each Partner" and that those statements "shall be accompanied by a report of independent accountants." *Id.* at *5. The agreement also specified that these materials would be sent to each partner within 120 days of the end of the fiscal year. *Id.* Based on this unambiguous language, the court found that the general partner was required to "prepare and mail to each partner financial statements and an accompanying audit report for each fiscal year." *Id.* at *8.

9. Section 7.2 of the SYFS Operating Agreement is materially different from that in *Bean*. Section 7.2 does not require SYFS or the Auditors to deliver financial statements to the members. Nor does it provide a deadline for doing so. Notwithstanding these critical distinctions, Plaintiffs contend that the use of the word

[31] "Because the LLC Act was based upon the Delaware Revised Uniform Limited Partnership Act and overarching principles reflected in both of the statutes are, in many material respects, identical, it is logical to conclude that, except where an analogy fails due to a fundamental difference between a Delaware limited partnership and an LLC, authorities decided under the Limited Partnership Act should be relevant in interpreting the LLC Act and in dealing with issues relating to LLCs." *Achaian, Inc. v. Leemon Fam. LLC*, 25 A.3d 800, 803 n.10 (Del. Ch. 2011) (cleaned up); *see also Elf Atochem N. Am., Inc. v. Jaffari*, 727 A.2d 286, 290–91 (Del. 1999) ("The Delaware [LLC] Act has been modeled on the popular Delaware LP Act. . . . Accordingly, the following observation relating to limited partnerships applies as well to limited liability companies . . . .").

"report" in Section 7.2 creates an annual delivery requirement for audited annual financial statements. Not so.

10. Section 7.2 does not contain an express requirement that the Company deliver annual audited financial statements to members. Section 7.2 obligates SYFS to hire Auditors and describes the scope of responsibilities for which SYFS will retain them: to review the financial statements, to audit the financial statements, and to report to the Members upon the financial statements. Section 7.2 specifies that this will be done for each Fiscal Year, identifying that only annual financial statements will be audited, and will be done as of the end of each Fiscal Year which, as defined in the LLC Agreement, ends in June. In sum, this section obligates SYFS to hire auditors to prepare annual audited financial statements, but does not create a delivery requirement.

11. The court reaches this conclusion for several reasons. First, conspicuously absent in the Operating Agreement, but present in *Bean*, is language requiring the Company or the Auditors to "mail a copy of such statements to each Partner," or that financial statements must be mailed within a specific time period after the end of the fiscal year. 2013 WL 755792, at *5. Second, it is clear by comparison to other sections of the Operating Agreement that Section 7.2 does not oblige the Company to deliver annual audited financial statements to members. For

example, Section 7.3(b) imposes an obligation to provide audited financial statements to certain members:

> The Company shall provide a copy of the most recent quarterly and audited annual financial statements of the Company to (i) each Class A Member, (ii) each Material SYFS Holder, so long as such Member continues to hold at least 50% of the Units held by such Member as of the date hereof, and (ii) [sic] so long as GPAC continues to hold at least 25% of the Units held by GPAC as of the date hereof, GPAC, in each case, upon such Member's request.

Section 7.3(b) requires delivery of audited financial statements to certain members, but only upon request. If, as Plaintiffs contend, Section 7.2 requires delivery of audited annual financial statements without requiring a request, then Section 7.3(b)'s requirement that they must be provided upon request would be superfluous. *See Osborn*, 991 A.2d at 1159 ("We will read a contract as a whole and we will give each provision and term effect, so as not to render any part of the contract mere surplusage." (internal quotation marks omitted)). Section 7.2 specifies that audited annual financial statements will be prepared for the end of each fiscal year. It says what Auditors will be hired to do—including that they will report to the Members upon the financial statements—but it does not specify how or when the Members will receive those statements.

12. Of course, there must be a way to determine the "how" and "when" any report is to be delivered to Members. That determination is made by looking at Section 7.3 of the Operating Agreement and the LLC Act. As Plaintiffs correctly

noted in their answering brief, they have no information rights under Section 7.3 because they do not hold any Class A units and are not "Material SYFS Holders," as defined. But that does not mean that the Plaintiffs were unable to obtain the annual audited financial statements or other financial information of the Company.

13. "LLC agreements can grant members inspection rights that exceed the rights provided for in the statute. Indeed, 'the basic approach of the [LLC] Act is to provide members with broad discretion in drafting the agreement and to furnish default provisions when the members' agreement is silent.'" *Mickman v. Am. Int'l Processing, L.L.C.*, 2009 WL 2244608, at *1 (Del. Ch. July 28, 2009) (alteration in original) (quoting *Elf Atochem*, 727 A.2d at 291). Here, Section 7.3 provides expanded informational rights to Class A Members, Material SYFS Holders, and GPAC. Those members, therefore, have expanded inspection rights. The Operating Agreement is silent regarding the inspection rights of the other members. Therefore, the LLC Act furnishes default provisions outlining their rights. And as Defendants acknowledged at oral argument, nothing in the Operating Agreement prevented the Plaintiffs from making an inspection demand for the Company's annual financial statements.[32] Under Section 18-305 of the LLC Act, each member "has the right,"

[32] *See* Oral Argument at 7:17–8:4.

subject to standards stated in the limited liability company agreement, "to obtain" from the company "upon reasonable demand" certain books and records, including:

> (1) True and full information regarding the status of the business and financial condition of the limited liability company;
>
> (2) Promptly after becoming available, a copy of the limited liability company's federal, state and local income tax returns for each year;[33]

14. Section 7.2 requires that the Company retain auditors to review, audit, and report to Members upon the financial statements of the Company. It does not specify when or how Members receive information about the Company. The statute provides the method by which Plaintiffs could have requested that information. Based on the plain language of the Operating Agreement and the LLC Act, Plaintiffs only had the right to receive information upon request. Plaintiffs made no such request.[34] Therefore, the Company did not breach Section 7.2 by not providing information unprompted.

15. Accordingly, Count I must be dismissed.

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[33] 6 *Del. C.* § 18-305(a).

[34] Plaintiffs make passing reference to their having submitted a request for certain unidentified information before filing their Complaint and that the Company did not respond. Compl. ¶ 56. But Plaintiffs do not argue that Defendants' failure to provide information in response to that request was a breach of Plaintiffs' rights under 6 *Del. C.* § 18-305. Compl. ¶ 56. Nor do Plaintiffs rely on this request as a basis for their claims in this action, which seek damages, not an order compelling inspection of books and records. *See id.* at 38–39.

16. Count II alleges that Defendants breached the implied covenant of good faith and fair dealing in two ways: first, by failing to provide information to unitholders, and second, by circumventing the distribution scheme of Section 6.6(b). As to the first claim, Count II is dismissed as to the individual defendants and Altamont for the same reason that Count I was dismissed against such defendants—Section 7.2 imposes no obligation upon them and Plaintiffs have not demonstrated why an implied obligation would differ. More broadly, Count II also fails to state a claim for breach of the implied covenant under either theory.

17. Although the Operating Agreement eliminates fiduciary duties, it does not by its terms and cannot under the LLC Act eliminate the implied contractual covenant of good faith and fair dealing.[35] And as a general matter, "implicit obligations consistent with the text of written obligations may, indeed under correct conditions should be inferred under both statutes and contracts." *Schwartzberg v. CRITEF Assocs. Ltd. P'ship*, 685 A.2d 365, 376 (Del. Ch. 1996). "Courts utilize the implied covenant to infer contract terms to handle developments or contractual gaps that the asserting party pleads neither party anticipated, and courts will invoke the implied covenant to imply terms when necessary to protect the reasonable expectations of the parties." *Baldwin v. New Wood Res. LLC*, 283 A.3d 1099, 1116

[35] Operating Agreement Art. IV § 4.5(a); 6 *Del. C.* § 18-1101(c).

(Del. 2022) (cleaned up). "The implied covenant, however, is a cautious enterprise. . . . [I]t is a limited and extraordinary legal remedy and not an equitable remedy for rebalancing economic interests that could have been anticipated. It cannot be invoked when the contract addresses the conduct at issue." *Glaxo Gp. Ltd. v. DRIT LP*, 248 A.3d 911, 920 (Del. 2021) (footnotes and internal quotation marks omitted). "The conditions under which an implied contractual obligation may be inferred [are] narrowly construed." *Schwartzberg*, 685 A.2d at 376 (citing *Katz v. Oak Indus., Inc.*, 508 A.2d 873 (Del. Ch. 1986)).

18. First, with respect to Plaintiffs' informational rights, there is no gap for the implied covenant to fill. As explained above, the Operating Agreement did not, on its face, provide Plaintiffs with informational rights. Where the agreement is silent "the Court must look to the [LLC Act] to see if one of its default provisions apply." *Holifield*, 304 A.3d at 923 (internal quotation marks omitted). Here, the Operating Agreement's silence triggers application of 6 *Del. C.* § 18-305 by default to supply Plaintiffs' informational rights. Therefore, Defendants did not breach the implied covenant by not delivering information to Plaintiffs that they did not request in accordance with the statute.

19. Second, Plaintiffs argue that "the implied covenant dictates that Section 6.6(b) set an exclusive framework through which the different SYFS equity holders

would be able to profit from the Company."[36] Therefore, Plaintiffs contend, Defendants could not profit from the Company in any contrary manner. More broadly, Plaintiffs contend that Defendants acted in bad faith by selling assets to Ripley and Vivant in the Asset Sale at an unfair price and by compensating consultants with ties to Altamont in alleged circumvention of the distribution waterfall in Section 6.6(b).

20. Defendants argue that this second asserted breach of the implied covenant is nothing more than a backdoor attempt to assert a claim for breach of fiduciary duty in the face of an express provision in the Operating Agreement that eliminates all fiduciary duties. The court agrees.

21. The implied covenant "cannot be used to circumvent the parties' bargain, or to create a free-floating duty . . . unattached to the underlying legal document." *Dunlap v. State Farm Fire & Cas. Co.*, 878 A.2d 434, 441 (Del. 2005) (alteration in original) (footnote and internal quotation marks omitted). "In order to plead successfully a breach of an implied covenant of good faith and fair dealing, the plaintiff must allege a specific implied contractual obligation, a breach of that obligation by the defendant, and resulting damage to the plaintiff." *Cantor Fitzgerald, L.P. v. Cantor, et al.*, 1998 WL 842316, at *1 (Del. Ch. Nov. 10, 1998).

[36] Pls.' Answering Br. 35.

"When conducting this analysis, we must assess the parties' reasonable expectations at the time of contracting and not rewrite the contract to appease a party who later wishes to rewrite a contract he now believes to have been a bad deal." *Nemec v. Shrader*, 991 A.2d 1120, 1126 (Del. 2010) (footnote omitted).

> Since a court can only imply a contractual obligation when the express terms of the contract indicate that the parties would have agreed to the obligation had they negotiated the issue, the plaintiff must advance provisions of the agreement that support this finding in order to allege sufficiently a specific implied contractual obligation.

Cantor Fitzgerald, 1998 WL 842316, at *1 (footnote omitted).

22. "The covenant is best understood as a way of implying terms in the agreement, whether employed to analyze unanticipated developments or to fill gaps in the contract's provisions." *Dunlap*, 878 A.2d at 441 (footnotes and internal quotation marks omitted). But "[i]mplying terms into a written contract should be a cautious enterprise." *Murfey v. WHC Ventures, LLC*, 236 A.3d 337, 350 (Del. 2020). "This Court has recognized the occasional necessity of implying contract terms to ensure the parties' reasonable expectations are fulfilled. This quasi-reformation, however, should be [a] rare and fact-intensive exercise, governed solely by issues of compelling fairness." *Dunlap*, 878 A.2d at 442 (alteration in original) (footnote and internal quotation marks omitted). That is particularly so where, as here, the limited liability company agreement unequivocally eliminates fiduciary duties.

> When an [LLC's Operating Agreement] eliminates fiduciary duties as part of a detailed contractual governance scheme, Delaware courts should be all the more hesitant to resort to the implied covenant. . . . Respecting the elimination of fiduciary duties requires that courts not bend an alternative and less powerful tool into a fiduciary substitute.

Lonergan v. EPE Hldgs., LLC, 5 A.3d 1008, 1018–19 (Del. Ch. 2010).

23. Plaintiffs insist that they are not asserting a breach of fiduciary duty claim, and are not arguing that there is any liability based on the process by which the Asset Sale occurred or the consulting payments were made. Rather, Plaintiffs maintain that they can pursue an implied covenant claim solely based on the allegedly unfair price of those transactions.[37]

24. Plaintiffs' primary authority in support of this claim is *American Capital Acquisition Partners, LLC v. LPL Holdings, Inc.*, 2014 WL 354496 (Del. Ch. Feb. 3, 2014). There, the plaintiffs argued that revenue targets in an earnout and in employment agreements included an implied term that the defendants not siphon from and sabotage the target company to undermine the plaintiffs' rights under various agreements. In response, the defendants argued only that the plaintiffs' allegations were conclusory and that they had failed to adequately plead damages,

[37] *See id.* at 38 ("Plaintiffs make no arguments about deficiencies in the sale process that led to the Asset Sale, explaining instead how Ripley's sweetheart price led to clearly profitable operating assets being stripped from the Company for an unfair price in a way that undermined Class B unitholders' distribution rights. Moreover, Altamont lined the pockets of its own insiders through lucrative consulting contracts, and Ripley used escrow funds – over which he had sole control – to make unsubstantiated payments, including the Ripley Revocable Trust." (citations omitted)).

and did not contend that the plaintiffs' interpretation was inconsistent with the parties' agreements. The *American Capital* court held that the earnout, contingent compensation agreements, and section providing for revenue calculations "demonstrate that, had the parties contemplated that the Defendants might affirmatively act to gut [the target] to minimize payments under the SPA and employment agreements, the parties would have contracted to prevent [the buyer] from shifting revenue from [the target] to [the buyer's affiliate]." *Id.* at *7.

25. Here, Plaintiffs argue that "the implied covenant dictates that Section 6.6(b) set an exclusive framework through which the different SYFS equity holders would be able to profit from the Company" and that *American Capital* provides an "instructive" comparison.[38] The court disagrees. *American Capital* involved a stock purchase agreement and employment agreements in which multiple terms confirmed the importance of revenue targets in determining the consideration owed under those contracts. There, the court found that, had the parties considered whether the buyer should be permitted to actively sabotage the target company to cause it to miss revenue targets, they would have agreed to prohibit such conduct. By contrast, Plaintiffs here argue that a waterfall provision contains an implied prohibition on

[38] *Id*. at 35.

self-dealing in an operating agreement that unambiguously eliminates its Managers' fiduciary duties.[39]

26. Plaintiffs have not presented any non-conclusory argument as to why, based on the parties' expectations at the time of contracting, Section 6.6(b) implies "an exclusive framework through which the different SYFS equity holders would be able to profit from the Company."[40] Rather, an inspection of the Operating Agreement demonstrates that other methods of profit were possible, and that the distribution scheme was not inviolate. For example, Section 3.9 provides that the Board may authorize remuneration to Members for "acting in the Company business," and Section 4.6 contemplates that Members or Managers may also be employees.[41] The Operating Agreement also expressly contemplates that the

[39] Additionally, Plaintiffs' reliance on a factual comparison to *American Capital* rather than interpretation of the Operating Agreement belies their attempt to plead a fiduciary claim in implied covenant clothing. Plaintiffs' contention that they are not alleging a breach of fiduciary duty because they allege unfair price, not unfair process, is similarly unavailing. Plaintiffs also contend that they "bring precisely the type of claim that the Delaware Supreme Court suggested would be successful in [*Miller v. HCP Trumpet Investments, LLC*, 194 A.3d 908 (Del. 2018)]." Pls.' Answering Br. 38. Plaintiffs do not, however, elaborate on what such claim would have been in *Miller* or expound upon why one would be present here. "The Court bears no duty here to spin counsel's straw into gold." *Maric Healthcare, LLC v. Guerrero*, 2024 WL 2993336, at *9 (Del. Ch. June 14, 2024); *Roca v. E.I. du Pont de Nemours & Co.*, 842 A.2d 1238, 1242 n.12 (Del. 2004) ("It is not enough merely to mention a possible argument in the most skeletal way, leaving the court to do counsel's work." (internal quotation marks omitted)).

[40] Pls.' Answering Br. 35.

[41] Operating Agreement Art. III § 3.9; *see id.* Art. IV § 4.6 (discussing "Members or Managers who are also employees of any member of the Sequel Group").

distribution rights *may* be impaired, including by issuance of new classes of interests.[42] Additionally, the Operating Agreement unambiguously eliminates Managers' fiduciary duties—including the prohibition on self-dealing—and provides that Members and Managers may compete with the Company.[43]

27. Plaintiffs have not presented a gap to be filled, or a term so obviously implied as to import duties the parties sought to eliminate. Again, Plaintiffs argue only that the mere inclusion of a waterfall for distributions implies a prohibition on self-dealing in an operating agreement that expressly eliminated fiduciary duties. That is insufficient to support a claim against Defendants for breach of the implied covenant of good faith and fair dealing. Neither of Plaintiffs' theories thereunder having stated a claim, Count II must be dismissed.

28. Count III alleges unjust enrichment against all Defendants.[44] The elements of a claim for unjust enrichment are: (1) an enrichment, (2) an

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[42] "No Member shall, by reason of his, her or its holding Units of any class of the Company, have any preemptive or preferential right, under the Act or otherwise, to purchase or subscribe for any Interest, now or hereafter to be authorized, or any notes, debentures, bonds or other securities convertible into or carrying options, warrants or rights to purchase Units of any class or any other Interest, now or hereafter to be authorized, whether or not the issuance of any Units or Interest or such notes, debentures, bonds or other securities would adversely affect the distribution or voting rights of any such Member." *Id.* Art. III § 3.5.

[43] *Id.* Art. IV §§ 4.5–4.6.

[44] Plaintiffs argue that "[s]pecifically, with respect to Defendants' unjust benefits," Defendants were unjustly enriched by the Asset Sale and the consultant agreements—but makes no mention of the payments from the escrow fund. *See* Pls.' Answering Br. 40.

impoverishment, (3) a relation between the enrichment and the impoverishment, and (4) the absence of justification. *Garfield ex rel. ODP Corp. v. Allen*, 277 A.3d 296, 341–51 (Del. Ch. 2022) (explaining that the traditional fifth element—absence of a remedy at law—is not a necessary element absent a dispute over jurisdiction).

29. "A party cannot seek recovery under an unjust enrichment theory if a contract 'is the measure of [the party's] right.'" *ID Biomedical Corp. v. TM Techs., Inc.*, 1995 WL 130743, at *15 (Del. Ch. Mar. 16, 1995) (quoting *Wood v. Coastal States Gas Corp.*, 401 A.2d 932, 942 (Del. 1979); *accord Enzolytics, Inc. v. Empire Stock Transfer Inc.*, 2023 WL 2543952, at *5 (Del. Ch. Mar. 16, 2023). The court's reasoning in *Albert v. Alex. Brown Management Services, Inc.*, 2005 WL 2130607 (Del. Ch. Aug. 26, 2005), is applicable here:

> It is undisputed that a written contract existed between the unitholders and the defendants. The [Operating Agreement] for [SYFS] spelled out the relationship between the parties, and the plaintiffs specifically brought claims based on [the Operating Agreement].
>
> Notwithstanding the existence of these contractual relationships, the plaintiffs make the bald claim that the [Defendants] were unjustly enriched at the unitholders expense. This is insufficient to state a claim for unjust enrichment, when the existence of a contractual relationship is not controverted. Thus, this claim must be dismissed.[45]

[45] *Cf. Albert*, 2005 WL 2130607, at *8 ("In some circumstances, alternative pleading allows a party to seek recovery under theories of contract or quasi-contract. This is generally so, however, only when there is doubt surrounding the enforceability or the existence of the contract. Courts generally dismiss claims for *quantum meruit* on the pleadings when it is clear from the face of the complaint that there exists an express contract that controls.").

Id. at *8.

30. Count IV alleges that the Defendants engaged in a civil conspiracy. "Civil conspiracy is not an independent cause of action; it must be predicated on an underlying wrong. Thus, if plaintiff fails to adequately allege the elements of the underlying claim, the conspiracy claim must be dismissed." *Kuroda v. SPJS Hldgs., L.L.C.*, 971 A.2d 872, 892 (Del. Ch. 2009) (footnote omitted). Plaintiffs have not stated any underlying claims; therefore, the conspiracy claim must, too, be dismissed.

31. For the foregoing reasons, the motions to dismiss are granted in full, and the Complaint is dismissed with prejudice.

/s/ Paul A. Fioravanti, Jr.
Vice Chancellor