

DTI-DSIC, LLC v 930-DSIC, LLC

2025 NY Slip Op 33095(U)

August 14, 2025

Supreme Court, New York County

Docket Number: Index No. 650762/2025

Judge: Melissa A. Crane

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This opinion is uncorrected and not selected for official publication.

**SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY**

PRESENT: HON. MELISSA A. CRANE PART 60M

Justice

-----X

DTI-DSIC, LLC,

Plaintiff,

- v -

930-DSIC, LLC, 930-DSIC PARTNER, LLC, STUART J. RABIN

Defendant.

-----X

INDEX NO. 650762/2025

MOTION DATE 05/13/2025

MOTION SEQ. NO. 001

DECISION + ORDER ON MOTION

The following e-filed documents, listed by NYSCEF document number (Motion 001) 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 27, 28, 29, 30, 31, 32

were read on this motion to/for DISMISS.

Upon the foregoing documents, it is

The motion to dismiss is decided in accordance with the reasoning on the record of August 14, 2025. That plaintiff is a “Defaulting Member” under § 4.2 of the Amended and Restated Operating Agreement (the Agreement EDOC 180), is not in dispute, at least not on this motion.

In sum, the court denies dismissal of the first count for breach of contract. Although plaintiff no longer challenges valuation concerning this cause of action, there remains a disputed issue of fact about whether defendants breached the contract when they failed to pay plaintiff the proceeds from the forced sale of its membership interest. As explained on the record, the Agreement, as onerous to plaintiff as it seems to be, does not define “distribution.” It is therefore not clear whether paying plaintiff the proceeds of the forced sale would qualify as a distribution, or whether the funds defendants are holding simply sale proceeds.

§ 4.2(e) of the Agreement allows for the forced sale:

(e) Forced Sale. The Managing Member shall have full power, in its discretion, to require the Defaulting Member to sell its Interest to the Managing Member, one or more other Members and/or one or more third parties designated by the Managing Member (which third party or third parties may be Affiliates of the Managing Member or any other Member), at a purchase price equal to the lesser of (x) the cost of such Defaulting Member's Interest or (y) such price as the Managing Member determines in good faith is fair and reasonable under the circumstances.

After the forced sale of plaintiff's interest, defendants did not turn over the net proceeds of the sale. This left plaintiff without any membership interest and without any compensation, despite having made a substantial investment. Although the Agreement does not require defendants to pay the proceeds within any set time period, if defendants are supposed to turn over the proceeds, the law would imply a reasonable time.

For the reasons stated on the record, the court dismissed the second count for unjust enrichment and the third count for conversion. These claims duplicate the first count for breach of contract.

The court reserved on whether to dismiss the fourth count for breach of fiduciary duty and now decides this issue. Section 3.2 (c) contains a limitation, but not an outright disavowal, of defendant's fiduciary obligations:

3.2 Liability of Managing Member

* * *

(c) Reliance on This Agreement. **To the extent that**, at law or in equity, **the Managing Member has duties (including fiduciary duties)** and liabilities relating thereto to the Company, the Portfolio Company or any other Person in which the Company has a direct or indirect interest or to another Member (or any of their respective Affiliates), **the Managing Member acting under this Agreement shall not be liable** to the Company or **to any such other Member (or any of their respective Affiliates) for its good faith reliance on the provisions of this Agreement**. The provisions of this Agreement, to the extent that they expand or restrict the duties and liabilities of the Managing Member otherwise existing at law or in equity, are agreed by the Members to modify to that extent such other duties and liabilities of the Managing Member.
(emphasis added)

Therefore, so long as the managing members act in good faith reliance on the provisions of the Agreement, they cannot be liable for breach of fiduciary duty. Nevertheless, this section still recognizes that the managers have fiduciary duties: “To the extent that, at law or in equity, the Managing Member has duties (including fiduciary duties).” The managers can still be liable for breach of fiduciary duty if they act in bad faith reliance on the terms of the Agreement or simply act in bad faith outside of the terms of the Agreement. Plaintiff has alleged that defendants acted in bad faith when they refused to pay it the proceeds of the forced sale and instead issued a promissory note with no end in sight for when plaintiff might receive the sale proceeds. In the event this course of conduct is not a strict breach of contract, it might still constitute bad faith. Therefore, the court denies dismissal of the fourth count for breach of fiduciary duty.

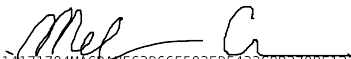
For the reasons stated on the record, the court denies dismissal of the fifth count for an accounting. As there remains a fiduciary relationship between plaintiff and defendants, plaintiff has standing to assert a cause of action for an accounting. Plaintiff questions the over \$400,000 in fees for various expenses that defendants have used to reduce the sale proceeds for plaintiff’s membership. As one owed a fiduciary duty, plaintiff is entitled to know more about those fees.

Finally, the court dismisses the sixth count for fraud without prejudice for the reasons stated on the record. Not only does plaintiff fail to plead fraud with particularity, but as presently constituted, the claim merely alleges a breach of contract (see *Cronos Grp. Ltd. v. XComIP, LLC*, 156 A.D.3d 54, 63 [1st Dep’t 2017][false assurance that promisor would perform preexisting contractual obligation was not collateral or extraneous to contract]; see also *Empanada Fresca LLC v. 1 BK St. Corp.*, 238 A.D.3d 589, 596 [1st Dep’t 2025]).

Accordingly, it is

ORDERED THAT the court dismisses the second, third, and sixth counts of the complaint and otherwise denies the motion; and it is further

ORDERED THAT defendants shall have 30 days from the e-filed date of this decision and order to answer the complaint.


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<u>8/14/2025</u>			<hr/> MELISSA A. CRANE, J.S.C.	
DATE				
CHECK ONE:	<input type="checkbox"/>	CASE DISPOSED	<input checked="" type="checkbox"/>	NON-FINAL DISPOSITION
	<input type="checkbox"/>	GRANTED	<input type="checkbox"/>	DENIED
APPLICATION:	<input type="checkbox"/>	SETTLE ORDER	<input checked="" type="checkbox"/>	GRANTED IN PART
CHECK IF APPROPRIATE:	<input type="checkbox"/>	INCLUDES TRANSFER/REASSIGN	<input type="checkbox"/>	SUBMIT ORDER
			<input type="checkbox"/>	FIDUCIARY APPOINTMENT
				<input type="checkbox"/>
				OTHER
				REFERENCE