

**Imian PV Member LLC v Vlacich LLC**

2025 NY Slip Op 33134(U)

August 19, 2025

Supreme Court, New York County

Docket Number: Index No. 654719/2024

Judge: Andrea Masley

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SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF NEW YORK: COMMERCIAL DIVISION PART 48

-----X		<b>INDEX NO.</b>	<u>654719/2024</u>
IMIAN PV MEMBER LLC,		<b>MOTION DATE</b>	<u>--</u>
	Plaintiff,	<b>MOTION SEQ. NO.</b>	<u>003</u>
	- v -	<b>DECISION + ORDER ON MOTION</b>	
VLACICH LLC,			
	Defendant.		
-----X			

HON. ANDREA MASLEY:

The following e-filed documents, listed by NYSCEF document number (Motion 003) 73, 74, 75, 76, 77, 78, 79, 80, 81, 82, 83, 87, 88, 89, 90, 91, 93, 94, 95, 96, 97, 98, 101 were read on this motion to/for SUMMARY JUDGMENT (AFTER JOINDER).

Plaintiff<sup>1</sup> Imian PV Member LLC moves: (1) pursuant to CPLR 3212 for summary judgment on its causes of action; (ii) pursuant to CPLR 3211 to dismiss defendant’s counterclaim; and (iii) pursuant to CPLR 3214(b) and 22 NYCRR 202.70, Commercial Division Rule 11(g) for a stay of discovery pending the determination on the underlying motion.

Plaintiff seeks summary judgment on its the first cause of action, pursuant to CPLR 3001, for a declaratory judgment that plaintiff complied with the terms of the Operating Agreement and is entitled to purchase defendant’s membership interest in PV Venture at the Offering Price, and following such declaration, on its second cause of action for specific performance, directing defendant to transfer and sell its interest in PV

<sup>1</sup> The action was converted to a plenary action. (NYSCEF 56, December 5, 2024, Decision and Order.)

Venture at the Offering Price to plaintiff within 30 days of the court's judgment.

(NYSCEF 1, Petition at 12/13.)

Section 7.6 of the Operating Agreement provides:

“Mutual Buy-Sell. (a) In the event that, at any time and for any reason the Members are unable to resolve a disagreement or dispute after thirty (30) days of good faith discussions and negotiations (which 30 day period shall commence upon delivery of written notice of an impasse by the Initiating Member) regarding the management, operation or ownership of the Company whether such disagreement involves a decision or inaction of the Board or the Members, then either such Member (the ‘Initiating Member’) may send written notice (the ‘Offer Notice’) to the other such Member (the ‘Other Member’). The Offer Notice shall (a) set forth the Initiating Member’s determination of the net value of the Company (the ‘Determined Value’) (i.e., the Initiating Member’s determination of the then fair market value of the Company free of all liabilities of the Company), (b) state a purchase price (the ‘Offering Price’) for the Membership Interests then owned by the Other Member, which Offering Price shall be equal to the amount the Other Member would receive if all of the Company’s assets were sold for net proceeds equal to the Determined Value and liquidated with no establishment of any reserves and (c) offer (at the option of the Other Member) either (i) to purchase all (but not less than all) of the Membership Interests in the Company of the Other Member at the Offering Price, or (ii) to sell all (but not less than all) of the Membership Interests in the Company of the Initiating Member to the Other Member at a price for the Offering Member’s Membership Interest in the Company, calculated in the same manner as set forth above. Simultaneously with the sending of such notice, the Initiating Member shall deposit via bank check or wire transfer with a reputable title company licensed to do business in New York (the ‘Escrow Agent’), who will act as a bona fide escrow agent, an amount equal to ten percent (10%) of the Offering Price. (b) Within thirty (30) days after receipt of such notice from the Initiating Member, the Other Member, at its sole option, shall elect either (i) to sell all (but not less than all) of the Other Member’s Membership Interests in the Company to the Initiating Member at the Offering Price, or (ii) to purchase all (but not less than all) of the Initiating Member’s Membership Interest in the Company at the price therefor determined as set forth above. The Other Member shall make its election by sending written notice to the Initiating Member and the Escrow Agent on or before the expiration of such thirty (30) day period. In the event that the Other Member elects to purchase all (but not less than all) of the Initiating Member’s Membership Interest in the Company, then simultaneously with the sending of such notice, (A) the Other Member shall deposit in escrow with the Escrow Agent an amount equal to ten percent (10%) of the price thereof and (B) the Escrow Agent shall promptly return to the Initiating Member the deposit previously placed by the Initiating Member in escrow. The failure or refusal by the Other Member timely to elect either to sell or purchase pursuant to this subparagraph (b), and/or the failure or

refusal by the Other Member to comply fully, within the prescribed time periods, with all provisions of this Article, shall be conclusively deemed for purposes of this Article to constitute an election by the Other Member to sell all (but not less than all) of its Membership Interest in the Company to the Initiating Member at the Offering Price.” (NYSCEF 3, Amended & Restated Limited Liability Company Operating Agreement of PV Venture LLC.)

Plaintiff’s motion for summary judgment is denied for the reasons stated on the record on August 18, 2025. Before the court can reach §7.6, the parties must conclude discovery. Moreover, plaintiff overlooks defendant’s thirty-four defenses, including that plaintiff breached first. Plaintiff shall submit the transcript to be so ordered.

Plaintiff’s motion to dismiss defendant’s counterclaim is granted. While defendant may have claims for breach of contract and fraudulent inducement and may under appropriate circumstances seek reformation of the contract, none of that is stated in defendant’s counterclaim for “declaratory relief;”<sup>2</sup> the claim is indecipherable.

Plaintiff’s motion to stay discovery is denied as moot. The motion was decided on the record. Moreover, one of the reasons the motion for summary judgment is denied is because plaintiff has not produced critical discovery. Instead, plaintiff filed this motion on March 4, 2025, when discovery was pending.<sup>3</sup> What is worse, the parties stipulated to an extension of time for discovery to end on August 22, 2025, all while this motion was pending. (NYSCEF 102.) The parties shall comply with the following discovery schedule, otherwise waived or sanctions will issue:

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<sup>2</sup> On January 3, 2025, defendant filed a summons and “answer with cross claims” wherein defendant adds a new defendant, PV Venture, and asserts a counterclaim and cross-claim for declaratory relief against plaintiff and PV Venture. (NYSCEF 61.) Defendant, however, did not comply with the proper procedure to implead PV Venture LLC. (CPLR 1007.)

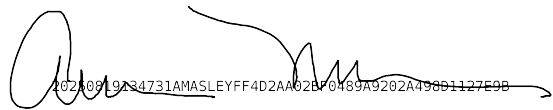
<sup>3</sup> The end for discovery was set for May 14, 2025 (NYSCEF 65, Preliminary Conference Order [dated January 10, 2025].)

1. By 5 pm on August 22, 2025, plaintiff shall produce any and all documents demonstrating how much and when plaintiff contributed to the LLC.
2. By 5 pm on August 29, 2025, plaintiff shall produce any and all documents or communications responsive to defendants demand #3 (NYSCEF 69) including any and all communications with the lender concerning this case or the related Queens case,<sup>4</sup> the development project, defendant or its property, and the LLC or its property.
3. By 5 pm on August 22, 2025, plaintiff shall respond to defendant’s document demands or interrogatories, if any.
4. By 5 pm on August 29, 2025, plaintiff shall produce responsive documents.
5. Parties shall serve party deposition notices by August 22, 2025.
6. Party depositions shall be taken by September 19, 2025.
7. Nonparty depositions shall be taken by October 10, 2025.
8. Parties shall serve nonparty subpoenas by September 5, 2025.
9. Parties shall serve privilege logs by August 29, 2025.
10. Parties shall submit a written discovery update which shall be emailed to the court and filed in NYSCEF by September 5, 2025.
11. Either party shall notify the court by October 15, 2025 if they wish to take expert discovery.
12. Note of issue shall be filed by October 17, 2025.
13. Discovery is waived or sanctions will issue if deadlines are not complied with.

Accordingly, it is

ORDERED that plaintiff’s motion 003 is granted to the extent that defendant’s counterclaim is dismissed; the motion is otherwise denied; and it is further

ORDERED that the parties shall comply with the discovery deadlines in this 2024 case. Otherwise, waived or sanctions will issue.



	<u>8/19/2025</u>		
	<b>DATE</b>		<b>ANDREA MASLEY, J.S.C.</b>
CHECK ONE:	<input type="checkbox"/> CASE DISPOSED	<input checked="" type="checkbox"/> NON-FINAL DISPOSITION	
	<input type="checkbox"/> GRANTED <input type="checkbox"/> DENIED	<input checked="" type="checkbox"/> GRANTED IN PART	<input type="checkbox"/> OTHER
APPLICATION:	<input type="checkbox"/> SETTLE ORDER	<input type="checkbox"/> SUBMIT ORDER	
CHECK IF APPROPRIATE:	<input type="checkbox"/> INCLUDES TRANSFER/REASSIGN	<input type="checkbox"/> FIDUCIARY APPOINTMENT	<input type="checkbox"/> REFERENCE

<sup>4</sup> *Vlacich LLC individually and on behalf of PV Venture LLC v Imian PV Member LLC et al*, Index No. 721125/2024.