

Ambase Corp. v 111 W. 57th Sponsor LLC

2025 NY Slip Op 33391(U)

September 9, 2025

Supreme Court, New York County

Docket Number: Index No. 652301/2016

Judge: Joel M. Cohen

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SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK: COMMERCIAL DIVISION PART 03M

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AMBASE CORPORATION, 111 WEST 57TH MANAGER
FUNDING LLC, 111 WEST 57TH INVESTMENT LLC, ON
BEHALF OF ITSELF AND DERIVATIVELY ON BEHALF
OF 111 WEST 57TH PARTNERS LLC, 111 WEST 57TH
MEZZ 1 LLC,

Plaintiffs,

INDEX NO. 652301/2016

MOTION DATE 02/21/2025,
02/21/2025

MOTION SEQ. NO. 032 033

- v -

**DECISION + ORDER ON
MOTION**

111 WEST 57TH SPONSOR LLC, 111 WEST 57TH
CONTROL LLC, 111 WEST 57TH DEVELOPER
LLC, KEVIN MALONEY, MATTHEW PHILLIPS, MICHAEL
STERN, NED WHITE, 111 CONSTRUCTION MANAGER
LLC, PROPERTY MARKETS GROUP, INC., JDS
DEVELOPMENT LLC, JDS CONSTRUCTION GROUP,
LLC, PMG CONSTRUCTION GROUP LLC, MANAGER
MEMBER 111W57 LLC, LIBERTY MUTUAL INSURANCE
COMPANY, LIBERTY MUTUAL FIRE INSURANCE
COMPANY, 111 WEST 57TH PARTNERS LLC (AS A
NOMINAL DEFENDANT), 111 WEST 57TH MEZZ 1 LLC,

Defendants.

-----X

HON. JOEL M. COHEN:

The following e-filed documents, listed by NYSCEF document number (Motion 032) 944, 945, 946, 947, 948, 949, 950, 951, 952, 953, 954, 955, 956, 957, 958, 959, 960, 961, 962, 963, 964, 965, 966, 967, 968, 969, 970, 971, 972, 973, 974, 975, 976, 977, 978, 979, 980, 981, 982, 983, 984, 985, 986, 987, 988, 989, 990, 991, 992, 993, 994, 995, 996, 997, 998, 999, 1000, 1001, 1002, 1003, 1004, 1005, 1006, 1007, 1008, 1009, 1010, 1011, 1012, 1013, 1014, 1015, 1016, 1017, 1018, 1019, 1020, 1021, 1022, 1023, 1024, 1025, 1026, 1027, 1028, 1029, 1030, 1031, 1032, 1033, 1034, 1035, 1036, 1037, 1038, 1039, 1040, 1041, 1042, 1043, 1044, 1045, 1046, 1233, 1234, 1235, 1236, 1237, 1238, 1239, 1240, 1241, 1242, 1243, 1244, 1245, 1254, 1255, 1256, 1257, 1258, 1259, 1260, 1273, 1276

were read on this motion for SUMMARY JUDGMENT.

The following e-filed documents, listed by NYSCEF document number (Motion 033) 1047, 1048, 1049, 1050, 1051, 1052, 1053, 1054, 1055, 1056, 1057, 1058, 1059, 1060, 1061, 1062, 1063, 1064, 1065, 1066, 1067, 1068, 1069, 1070, 1071, 1072, 1073, 1074, 1075, 1076, 1077, 1078, 1079, 1080, 1081, 1082, 1083, 1084, 1085, 1086, 1087, 1088, 1089, 1090, 1091, 1092, 1093, 1094, 1095, 1096, 1097, 1098, 1099, 1100, 1101, 1102, 1103, 1104, 1105, 1106, 1107, 1108, 1109, 1110, 1111, 1112, 1113, 1114, 1115, 1116, 1117, 1118, 1119, 1120, 1121, 1122, 1123, 1124, 1125, 1126, 1127, 1128, 1129, 1130, 1131, 1132, 1133, 1134, 1135, 1136, 1137, 1212, 1213, 1214, 1215, 1216, 1217, 1218, 1219, 1220, 1221, 1222, 1223, 1224, 1225, 1226, 1227, 1228, 1229, 1230, 1231, 1232, 1261, 1262, 1274, 1277

were read on this motion for

SUMMARY JUDGMENT

In this long and hard-fought litigation, involving four amended complaints and several appeals, the parties to this action—which involves a joint venture to develop a luxury residential skyscraper in Manhattan¹—have finally arrived at summary judgment. Both Plaintiffs² and Defendants³ now move for partial summary judgment on the Third, Seventh, and Eighth causes of action in the Fourth Amended Complaint (“FAC”) (NYSCEF 492).⁴ For the following reasons, Defendants’ motion is granted in part, and Plaintiffs’ motion is denied.

DISCUSSION

“The proponent of a summary judgment motion must make a *prima facie* showing of entitlement to judgment as a matter of law, tendering sufficient evidence to eliminate any material issues of fact from the case” (*Winegrad v N.Y. Univ. Med. Ctr.*, 64 NY2d 851, 853

¹ The factual background of this action has been discussed at length (*see Ambase Corp. v 111 W. 57th Sponsor LLC*, 2018 NY Slip Op 30160[U] [Sup Ct, NY County 2018], *affd*, 2021 NY Slip Op 02589 [1st Dept 2021]; *Ambase Corporation v ACREFI Mortgage Lending, LLC*, 2019 WL 5394498 [Sup Ct, NY County 2019]; *111 West 57th Street Property Owner v 111 West 57th Partners LLC*, 188 AD3d 590 [1st Dept 2021]; *111 W. 57th Inv. LLC v 111 W57 Mezz Inv. LLC*, 2022 NY Slip Op 34258[U] [Sup Ct, NY County 2022], *affd as mod*, 2023 NY Slip Op 05029 [1st Dept 2023]; *Ambase Corp. v 111 W. 57th Sponsor LLC*, 2022 NY Slip Op 31503[U], 2 [Sup Ct, NY County 2022]). The Court presumes familiarity with those facts here.

² AmBase Corporation (“AmBase”), 111 West 57th Manager Funding LLC (“Manager Funding”), and 111 West 57th Investment LLC (“Investor.” and together with AmBase and Manager Funding, “Plaintiffs”).

³ 111 West 57th Sponsor LLC (“Sponsor”), 111 West 57th Control LLC (“Control”), 111 West 57th Developer LLC (“Developer”), Kevin Maloney (“Maloney”), Matthew Phillips (“Phillips”), Michael Stern (“Stern”), Ned White (“White”), JDS Construction Group LLC (“JDS Construction”), PMG Construction Group LLC (“PMG Construction”), Property Markets Group, Inc. (“PMG Inc.”), 111 Construction Manager LLC (“Construction Manager”), and Manager Member 111 W57 LLC (collectively, “Defendants”).

⁴ Defendants also moved for summary judgment on the Second and Sixth Causes of Action. However, Plaintiffs have withdrawn those two claims (NYSCEF 1233 at 28 n16).

[1985]). The “burden [then] shifts to the party opposing the motion for summary judgment to produce evidentiary proof in admissible form sufficient to establish the existence of material issues of fact which require a trial of the action.” (*Alvarez v Prospect Hosp.*, 68 NY2d 320, 324 [1986]).

A. Breach of the JVA

Both parties move for summary judgment on certain branches of Plaintiffs’ Third Cause of Action for breach of the parties’ Joint Venture Agreement (“JVA”). Plaintiffs move on the allegations relating to the (1) Equity Put Right, and (2) Failure to Provide certain Budgets (FAC ¶¶ 321[i], [j], [k], [n], [o]). Defendants move on the allegations relating to the (1) Equity Put Right, (2) Implied Covenant Claim vis-à-vis the Strict Foreclosure, (3) Net Worth and Liquidity Guaranties, (4) Failure to Provide Documents to Sterling, and the (5) Payroll Allegations (FAC ¶¶ 321 [b], [i], [j], [k], [n], [m], [q], [p]). Summary judgment is denied in both directions, as fact issues permeate these claims.

First, as to the Equity Put Right, the parties dispute whether Section 11.5 of the JVA was triggered. Section 11.5 provides that the Equity Put is triggered if “after the closing of the Construction Loan, Investor declines to approve a proposed Budget in which the hard costs exceed an amount equal to one hundred ten percent (110%) of the hard costs set forth in the prior approved Budget[.]” (JVA § 11.5). Underlying this issue is a disagreement on what the “prior approved Budget” was and whether Defendants manipulated the hard costs so that they would not exceed 110%. The record indicates that Sponsor was aware of Section 11.5 and purposefully tried to avoid triggering the Equity Put (*see* NYSCEF 1103 [“Maloney Tr.”] at 184:10–14 [“Q. Okay. And this setting of this \$8 million in hard costs, was that done to have the total increase between the last approved and proposed stay under ten percent? A. Sure.”]; NYSCEF 1099

["Phillips Tr."] at 259:12–5, 260:6–12, 260:18–23 ["The purpose of trying to stay within that 10 percent threshold was in an effort to not trigger the put right."]; 261:3– 262:11).

However, both sides have provided different calculations attempting to show whether the proposed budget accurately or inaccurately reflected a less than 110% change in the hard costs of the project (*see* Plaintiff SOMF ¶¶ 139-154 [showing Plaintiff's calculations]; NYSCEF 1222 [Stern Aff.] ¶¶ 15-20 [Defendants explaining why the proposed budget's calculations are accurate]; *see* NYSCEF 1110 [showing hard and soft cost summary]). The Court finds that neither are conclusive at this stage. Since there is a dispute over material facts, summary judgment for both parties is denied.

Second, as to the Implied Covenant Claim vis-à-vis the Strict Foreclosure claim, this claim also survives summary judgment. Both parties acknowledge that Delaware courts enforce an implied duty of good faith only to fill gaps in contracts (*Baldwin v New Wood Resources LLC*, 283 A3d 1099, 1116 [Del 2022]; *Miller v HCP & Company*, 2018 WL 656378, *9 [Del. Ch. Feb. 1, 1998]). And while it is true that "the implied covenant of good faith is 'rarely invoked successfully'" (*Kuroda v SPJS Holdings, L.L.C.*, 971 A2d 872, 888 [Del Ch 2009]), this Court has previously noted that Plaintiffs have alleged "an extreme set of facts, but that's what the implied covenant frankly is for" (NYSCEF 677 [Sept. 28, 2023 Tr.] at 18:10–21). Since Section 8.1 of the JVA only directs that Sponsor "shall act at all times in good faith ... as may be required to promote the best interest of the Company" (JVA § 8.1) and does not speak to Sponsor's good faith actions vis-à-vis other "Members," (*i.e.*, Investment), Plaintiffs have a persuasive argument that the implied covenant fills that gap imposing a duty not to rob

Investment of the fruits of the contract through conduct such as forfeiting Investment's equity and cutting it out of the Project.⁵

Moreover, section 8.5 of the JVA, which waives fiduciary duties, cannot be construed as waiving or limiting the implied covenant. While Delaware law authorizes a waiver of fiduciary duties, it forbids waiving the implied covenant (Del. Code Ann. tit. 6, § 18-1101(c)).

Defendants argue that the facts surrounding the strict foreclosure are internally inconsistent because Stern and Maloney purportedly gave up more by agreeing to Mezz Investor's suborning and not objecting to the strict foreclosure than by objecting and forcing a foreclosure auction. However, Plaintiffs point out that Stern and Maloney arguably still benefitted in other ways such as removing Plaintiffs—who were demanding to be cashed out—from the project while carrying over all other equity interests and allowing new financing that would otherwise not have been possible on the project (*see Leyton v Siegel*, 212 AD3d 521, 522 [1st Dept 2023] [reinstating implied covenant claim where “[t]here are questions of fact as to defendants’ motivation for withholding distributions”] [applying Delaware law]). To that end, there are fact issues about Stern and Maloney’s incentives and intent in declining to object to the strict foreclosure. Thus, Defendants’ motion to dismiss this branch of the claim is denied.

Third, as to the Net Worth and Liquidity Guaranties allegations, there is a factual dispute as to whether Stern and Maloney demonstrated a combined net worth of at least \$200 million and

⁵ The Court also notes that the First Department has already held that in the Lender Action, “the complaint states a derivative cause of action for breach of the duty of good faith and fair dealing by alleging that [Mezz Investor], in which the [governing contract] vested discretion as to the exercise of UCC remedies, suborned insiders to allow it to exercise that discretion to plaintiff’s detriment.” (*111 W. 57th Inv. LLC*, 192 AD3d at 621–22). While the First Department was analyzing a different agreement, Stern and Maloney were those “insiders” that Mezz Investor allegedly “suborned.”

combined liquidity of at least \$30 million as required by the JVA §2.11(c) (“Sponsor and Principals, as applicable, covenant that each shall comply with any financial net worth and liquidity covenants specifically applicable thereto under any loan”). Defendants argue that Stern and Maloney satisfied the minimum net worth and liquidity requirements, and that no lender notified them of any concern. However, self-serving affirmations, without more, are insufficient to support a motion for summary judgment (*JDS Fourth Ave. JV II LLC v Largo 613 Baltic Street Partners LLC*, 2023 WL 8653110, at *2–3 [Sup Ct, NY County 2023] [granting summary judgment against Stern and several JDS affiliates, finding that “self-serving testimony of Mr. Stern” is “insufficient to raise a triable issue of fact”]). Therefore, Defendants’ motion for summary judgment on this issue is denied.

Fourth, as to Failure to Provide Documents to Sterling, fact issues remain on what information was given and whether or not it was misleading. Plaintiffs assert that Defendants violated Section 7.5 of the JVA through failing “to cooperate and share information with AmBase’s construction consultant, Sterling...” (FAC ¶ 321[m]). Section 7.5 of the JVA states that AmBase has the right to appoint a construction consultant and that Stern, Maloney, and Sponsor “shall use commercially reasonable efforts to cause any third parties to meet, consult, and otherwise cooperate with all such construction consultants....” (JVA § 7.5). As the First Department noted, “the language of section 7.5 makes clear that 111 West 57th Sponsor itself has the *affirmative obligation* to cooperate and consult with the construction consultant” (*Ambase Corp. v 111 W. 57th Sponsor LLC*, 221 AD3d 521, 522 [1st Dept 2023]).

There is a factual dispute about the extent to which Sponsor shared information and cooperated with Sterling. Plaintiffs provides evidence that while initially Stern and Maloney had cooperated with Sterling, by Spring 2016, Stern and Maloney arguably were not sharing

information with Sterling pertaining for specific budget items like the structural framing and newly awarded subcontracts (NYSCEF 1239 [“Sterling Letter”]; NYSCEF 1244 [Plaintiffs’ Response & Counterstatement to Defendants’ Statement of Facts [“Plaintiffs’ Response to DSOF”] ¶ 117 n. 7). Defendants on the other hand provide evidence that Sterling was given information and frequently was at the construction site until this litigation began (NYSCEF 956 [“Browne Disposition”] at 30:16-34:21; NYSCEF 1045 [Defendants’ Statement of Facts [“DSOF”] ¶ 60). Given the dispute over a material fact as to the extent of Sterling’s role prior to the litigation commencing, summary judgment is denied for both parties.

Finally, as to the Payroll Allegations, Plaintiffs allege that Sponsor breached its obligation under the Joint Venture Agreement by “reimbursing themselves for payroll expenses in violation of Section 8.3(b)” (FAC ¶ 321[q]). In relevant part, Section 8.3 states: “All reimbursement of expenses pursuant to this Section 8.3(b) will be subject to inclusion in and approval of such item in a Budget and, subject to Section 8.8, will not include any expenses representing payroll (except actual in-house legal costs) or overhead costs of Manager or of any Affiliate of Manager” (JVA §8.3[b]). Section 8.8 provides that “[a]ny fees payable by the Company or any Subsidiary to Manager or any of its Affiliates for management and development or pursuant to a management agreement, if any, will be agreed upon in advance by Manager and the Members in accordance with the Budget, and will be invoiced monthly. . . .” (JVA §8.8).

Defendants argue that this claim should be dismissed on the grounds that there is no evidence that the Company reimbursed Manager, or any other party, for its payroll expenses. Rather, Defendants submit that JDS and PMG received reimbursement of their payroll expenses from the proceeds of the Construction Loan, as permitted under the Construction Management Agreement (DSOF ¶ 44; NYSCEF 998 § 8.1.2), and that these payroll expenses were itemized in

the monthly Construction Loan requisitions (*see* NYSCEF 999) and approved for payment by the lenders—not the Company.

However, as Plaintiffs argue, the invoices in NYSCEF 999 only include single page invoices for the payroll of “JDS” and “PMG,” which does not make it clear what expenses were being charged. Plaintiffs additionally cite to requisitions from 2014 that Plaintiffs argue reflect that 111 West 57th Developer LLC would invoice the Project for payroll (NYSCEF 1241, 1242). At this stage, Defendants have not provided conclusive evidence to determine that there is no dispute of fact regarding whether Defendants reimbursed themselves for payroll expenses in violation of Section 8.3(b) of the JVA. Therefore, Defendants’ motion is denied.

B. Breach of the No Transfers Provision in the Manager LLC Agreement & JVA

In its Third Cause of Action, Plaintiffs seek damages for alleged breaches of contract against Defendants for transferring membership interests in Sponsor pursuant to Section 9.1 of the JVA (FAC ¶ 321[f]). In its Eighth Cause of Action, Plaintiffs seek damages from Control for transferring or encumbering its membership interests in Manger pursuant to Section 9.1 of the Manager LLC Agreement (FAC ¶¶ 365-69).

Section 9.1 of both the JVA and the Manager LLC Agreement provide that “[t]he Members shall not make, suffer, or permit” any transfers without obtaining the prior written approval of the Members, which approval may be withheld in such Member’s absolute discretion (JVA § 9.1; NYSCEF 138 [“Manager LLC Agrmt”] § 9.1). Section 9.3 of both the JVA and Manager LCC Agreement, titled, “Non-Recognition of Certain Transfers” provides: “Notwithstanding any other provision of this Agreement, any Transfer, sale, alienation, assignment, encumbrance or other disposition in contravention of any of the provisions of this Agreement shall be void and ineffective, and shall not bind, or be recognized by, the Company” (JVA § 9.3; Manager LLC

Agrmt § 9.3).⁶ Defendants argue that Plaintiffs cannot prove any improper transfers took place, and in any event, any purported transfers would be void *ab initio* and thus do not give rise to a claim for breach of contract.

First, there is an issue of fact as to whether or not any transfers in violation of these provisions took place. Defendants argue that Plaintiff have not proven that the alleged transfer to Mr. Juracich ever occurred because the agreement remained in escrow and there is no evidence that it was ever released or that Mr. Juracich ever in fact acquired the interest (*see* NYSCEF 1213 [Defendants' Response & Counterstatement to Plaintiffs' Statement of Facts ["DCSMF"] ¶ 52). However, as Plaintiffs point out, Mr. Juracich testified at his deposition that he invested around \$8,000,000 in the project and that he was Mr. Stern's partner (NYSCEF 1106 ["Juracich Tr."]) at 24–29, 104:19– 105:4). As to the alleged transfer between Stern and Maloney, Defendants nominally dispute Plaintiffs' documentary evidence, but they cite no factual evidence in opposition (DCSMF ¶¶ 205–207). Merely “disputing” Plaintiffs' evidence without proffering countervailing evidence is insufficient to meet their burden (*Zuckerman v. City of New York*, 49 NY2d 557, 562 [1980]).

However, even when assuming there was a violation of the no transfer provisions, any such violation does not give rise to a breach of contract claim.

First, the language of the no transfer provision contains “emphatic language of incurable voidness” (*Holifield v XRI Inv. Holdings LLC*, 304 A3d 896, 934 [Del 2023]) by providing that any transfer in violation of the agreement “shall be void and ineffective, and shall not bind, or be

⁶ The JVA and Manager LLC Agreement are governed by Delaware law (JVA §12.6; Manager LLC Agrmt § 12.5).

recognized by, the Company.” Thus, any transaction in violation of the provision would be void *ab initio*.

As discussed at oral argument (*see* NYSCEF 1284 [“07.28.25 Tr”] at 48:15-21), the Supreme Court of Delaware recently allowed a party to pursue breach of contract damages where it was found that transfers were made in violation of the parties’ “no transfers provision” (*Holifield*, 304 A3d at 935). In *Holifield*, however, the consequential damages were separate and apart from the transfer— which was found to be void *ab initio*—stemming from defendant having to expend considerable funds in a Texas action with a third-party that resulted from the plaintiff’s breach of the no transfer provision (*id.* at 938). Here, Plaintiffs have not identified any consequential damages stemming from the purported transfers. Indeed, to the extent any transfer was made to Mr. Juracich, he testified that his interest was wiped out with the strict foreclosure (Juracich Tr. at 86:2-6). Rather, Plaintiffs argue that they if they had known Defendants were transferring their interests in the Project, they would have refused to contribute additional capital to the Project. However, this is merely conjecture and is insufficient as a matter of law. Accordingly, summary judgment is granted in favor of Defendants on Plaintiffs’ Eighth Cause of Action for Breach of the Manager LLC Agreement and the branch of the Third Cause of Action for Breach of Section 9.1. of the JVA.

C. Contractual Indemnification

In the Seventh Cause of Action, Plaintiffs seek a declaration that, pursuant to Section 8.7(b) of the JVA and the Limited Joinder, Sponsor, Stern, and Maloney must indemnify Plaintiffs for damages caused by Sponsor’s material breaches of the JVA, which are, in turn, alleged as separate causes of action in the FAC (FAC ¶¶ 354-63). However, the Court finds that

Section 8.7 only applies to third-party claims. Therefore, summary judgment on the contractual indemnification claim is granted in favor of Defendants.

In Delaware, indemnification clauses are presumed to only apply to third-party claims, and not to first-party claims (*Fortis Advisors LLC v Boston Dynamics Inc.*, 2025 WL 1356521, at *5 [Del Super Ct Apr. 29, 2025]; *Data Centers, LLC v 1743 Holdings LLC*, 2015 WL 9464503, at *6 [Del Super Ct 2015] [“Absent specific language showing intent to extend the protections of an indemnity provision to claims brought against parties to the contract, the Court will interpret the indemnity provision as applying to third party claims only.”]). Applying an indemnification clause to first-party claims requires the clause “to clearly and unequivocally state that the parties intended to allow indemnity of damages resulting from first-party actions” (*id.* at *6).

Furthermore, Delaware courts will strive to interpret indemnification clauses in a manner that gives meaning to the entire agreement and avoids surplusage (*Fortis Advisors*, 2025 WL 1356521, at *7; *see Shorenstein*, 213 A.3d at 56 [emphasizing the general presumption against surplusage in contractual interpretation]).

While it is true, as Plaintiffs argue, that in recent years Delaware court have moved away from this presumption in the LLC context, Plaintiffs’ cases are distinguishable because they involve advancement or indemnification by the LLC (or trust) of a member or manager (*see Intl. Rail Partners LLC v Am. Rail Partners, LLC*, 2020 WL 6882105, at *8 [Del Ch 2020] [noting that “[t]he purpose of incorporating the statutory language into an LLC agreement “is to allow ... entities to attract talented individuals to act on behalf of the company by limiting the burdens of potential litigation against them.”]; *Nakahara v NS 1991 Am. Tr.*, 739 A2d 770 [Del Ch 1998] [Business Trust Act (BTA) did not prohibit business trust from advancing litigation expenses to its trustees]; *Menzies v Seyfarth Shaw LLP*, 2024 WL 2804813, at *1 [D Del 2024] [under BTA,

“a statutory trust” has “the power to indemnify and hold harmless any *trustee ... from and against any and all claims and demands whatsoever.*”) and is based on and deals with the statutory power of *the LLC itself* to indemnify its members and managers under 6 Del. Code § 18-108 (or BTA) and serves the statutory purpose of encouraging qualified managers to serve the company (Del. § 18-108).⁷

In any event, even if the Court were to find the third-party presumption did not apply here, the indemnification provisions here can only be harmonized if limited to third-party claims.

JVA 8.7[b] provides in relevant part:

To the fullest extent permitted by applicable law, the Company, Investor, Atlantic and its Affiliated Persons are hereby indemnified by Sponsor, and, to the extent provided in the Limited Joinder annexed hereto, Principals, on a joint and several basis, for any loss, damage or claim incurred by such Persons by reason of (i) the gross negligence, criminal acts, willful misconduct or fraud by Principals, Sponsor or any of their respective Affiliated Persons, and/or (ii) in respect of any loss, damage or claim resulting from a material breach by Sponsor or any of its Affiliated Persons of any provision or representation and warranty contained in this Agreement

(JVA 8.7[b]). Nothing in this provision indicates that it applies to “first-party” claims. There is no advancement provision or even attorney’s fees provision in the indemnification provisions. It is not clear what, in the first-party context, Defendants would be directed to indemnify, other than liability itself—which would be redundant of claims that are allowed under Section 8.5 of the JVA, and a work-around for claims not allowed under Section 8.5. Section 8.5 of the JVA states that Manager does not owe “duties or liabilities [owed] to the Company or any other

⁷ Del. § 18-108: Subject to such standards and restrictions, if any, as are set forth in its limited liability company agreement, *a limited liability company* may, and shall have the power to, *indemnify and hold harmless any member or manager* or other person from and against any and all claims and demands whatsoever”.

member....” (*id.* § 8.5). Section 8.6 states that the parties shall have no liability to each other absent fraud, negligence, criminal acts, or a material breach of the JVA (*id.* § 8.6). Given the specific provisions discussing the types of claims that can be brought against the parties in the JVA, to read Section 8.7(b) and the limited joinders to apply to first -party claims would “render other [JVA] provisions illusory” (*Fortis Advisors LLC*, 2025 WL 1356521, at *7). There would be no purpose in limiting liability if indemnification was to cover any breach of contract claim. Plaintiffs fail to explain how to otherwise read sections 8.5, 8.6, 8.7, and the limited joinders together in harmony.⁸

Moreover, there are other provisions in the JVA awarding attorneys’ fees between the parties (*see* JVA §12.11 [“In the event of any dispute between the parties hereto, the prevailing party shall be entitled to recover from the other party reasonable attorney's fees and costs incurred in connection therewith”]) indicating that the indemnification provision was for a different purpose, *i.e.*, third-party claims (*see Great Hill Equity Partners IV, LP v SIG Growth Equity Fund I, LLLP*, 2020 WL 7861336, at *6 [Del Ch 2020] [finding that indemnify provision did not apply to first-party claims; “[u]nderscoring this point is the fact that the parties *did* include a clear and unequivocal articulation of an intent to shift fees elsewhere in the

⁸ Section 8.5 of the JVA states that each of the parties in the agreement waives any “duties or liabilities [owed] to the Company or any other Member (including any fiduciary duties) ...provided, however, and that this Section 8.5 shall not eliminate or limit the liability of such parties (i) for acts or omissions that involve fraud, intentional misconduct or a knowing and culpable violation of law, or (ii) for any transactions not permitted or authorized under or pursuant to this Agreement....provided further, however, that the duty of care of each of such parties is to not commit fraud, intentional misconduct or a knowing and culpable violation of law” (JVA § 8.5). Section 8.6 states that the parties shall have no liability to each other absent fraud, negligence, criminal acts, or a material breach of the JVA (JVA § 8.6[b]).

agreement”)), *affd sub nom.*, 269 A3d 983 [Del 2021], and *affd sub nom.*, 269 A3d 983 [Del 2021]).

Accordingly, the Court finds that the indemnification provisions set forth in Section 8.7(b) and the limited joinders apply only to third-party claims. Therefore, summary judgment is granted in Defendants’ favor.

The Court has considered the parties’ remaining arguments and finds them unavailing.

Accordingly, it is

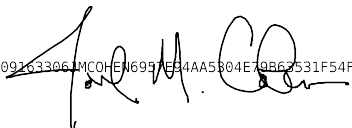
ORDERED that Defendants’ Motion for Partial Summary Judgment (Mot. Seq. 032) is **GRANTED IN PART** and the seventh cause of action seeking a declaration is denied and dismissed, as well as the eighth cause of action for breach of the Manager LLC Agreement and the branch of the third cause of action for breach of section 9.1 of the JVA; Defendants’ motion is otherwise denied; it is further

ORDERED that Plaintiffs’ Motion for Partial Summary Judgment (Mot. Seq. 033) is **DENIED**; it is further

ORDERED and DECLARED that Sponsor, Stern, and Maloney are not required to indemnify Plaintiffs for first-party claims under Section 8.7(b) of the JVA and the limited joinders; it is further

ORDERED that an initial telephonic pre-trial conference is scheduled for September 30, 2025, at 11:30 AM to discuss trial scheduling and logistics; the parties are directed to meet and confer prior to the conference to discuss the proposed length of trial and any other logistical issues that they have identified and be prepared to discuss those at the conference. The parties are directed to circulate dial-in information prior to the call.

This constitutes the Decision and Order of the Court.

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JOEL M. COHEN, J.S.C.

9/9/2025
DATE

CHECK ONE:

CASE DISPOSED

GRANTED

SETTLE ORDER

INCLUDES TRANSFER/REASSIGN

DENIED

NON-FINAL DISPOSITION

GRANTED IN PART

SUBMIT ORDER

FIDUCIARY APPOINTMENT

OTHER

REFERENCE

APPLICATION:

CHECK IF APPROPRIATE: