**IN THE SUPERIOR COURT OF THE STATE OF DELAWARE**

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| DARYL Z. LAISURE, as Trustee of The Daryl Z. Laisure Business Trust dated September 30, 2018, and DARYL Z. LAISURE, in his capacity as Sellers' Representative for the former shareholders of ZIN Technologies, | ) | |
| Plaintiffs, | ) | |
| v. | ) | C.A. No. N25C-09-117 SKR CCLD |
| VOYAGER TECHNOLOGIES, INC. (f/k/a VOYAGER SPACE HOLDINGS, INC.), | ) | |
| Defendant. | ) | |

Submitted: May 6, 2026
Decided: August 14, 2026

**MEMORANDUM OPINION AND ORDER**

*Upon Consideration of*
*Defendants' Motion to Dismiss:*
**GRANTED-IN-PART AND DENIED-IN-PART**

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**Rennie, J.**

# I. INTRODUCTION

This action arises from a unique factual matrix involving the commercial space travel industry, yet its resolution turns on two familiar principles of contract law: first, the jurisdictional scope of a contractually mandated expert determination, and second, the evolving application of the implied covenant of good faith and fair dealing post-*Johnson & Johnson v. Fortis Advisors*. Defendant has moved to dismiss the Complaint under Rule 12(b)(6). For the reasons set forth below, Defendant's Motion to Dismiss is GRANTED in part and DENIED in part.

The first issue concerns Plaintiffs' claims regarding a contractual earnout. The parties explicitly agreed to submit disputes arising from the earnout calculations to an independent expert accountant rather than a court of law. Because this Court honors such alternative dispute resolution provisions, Plaintiffs' earnout calculation claims are dismissed without prejudice to be heard before the designated expert. Plaintiffs' remaining earnout claims challenge Defendant's management of the acquired company during the earnout period. While these operational disputes fall outside the narrow authority of the expert accountant, and are properly before the Court, the Complaint fails to allege facts sufficient to state a claim for breach of the operative contractual provisions. Accordingly, the operational earnout claims are dismissed for failure to state a claim upon which relief can be granted.

The second issue involves Plaintiffs' claim that Defendant breached the implied covenant of good faith and fair dealing. Plaintiffs allege that Defendant utilized its technical control over the share transfer process to obstruct Plaintiffs from selling their shares in Defendant's initial public offering ("IPO")—thereby securing a liquidity restriction that Defendant had unsuccessfully attempted to secure by contract. At this stage, it is reasonably conceivable that Defendant breached an implicit, yet obvious, contractual commitment not to inject arbitrary discretion into a purely mechanical obligation.

Consequently, Defendant's Motion to Dismiss is DENIED as to the implied covenant claim.

## II. BACKGROUND[1]

The "Space Doc" program is a service arrangement initiated by the National Aeronautics and Space Administration ("NASA") under which private contractors provide operational and engineering support for the development and manufacturing of NASA's spaceflight systems.[2] NASA structured the Space Doc program into three sequential, separately awarded phases: Space Doc I, Space Doc II, and Space Doc III ("SD3").[3]

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[1] The facts are drawn from the well-pled allegations in the Complaint (the "Complaint") (Docket Item ("D.I.") 1) [hereinafter "Compl."].

[2] Compl. ¶ 12.

[3] *Id.*

ZIN Technologies, Inc. ("ZIN") specializes in the manufacture of aerospace hardware.[4] ZIN successfully secured the Space Doc I contract in 2010 and the subsequent Space Doc II contract in 2015.[5] In 2021, NASA began soliciting bids for the SD3 contract. Given its historical performance as the incumbent contractor, ZIN was, naturally, a frontrunner. On May 10, 2023 (the "Closing Date"), while NASA's final evaluation of the SD3 bids remained pending, Defendant Voyager Technologies, Inc. ("Defendant") acquired ZIN pursuant to a Share Purchase Agreement (the "SPA").[6] The sellers under the SPA were Plaintiffs The Daryl Z. Laisure Business Trust and Daryl Z. Laisure as Sellers' Representative (collectively, "Plaintiffs").

The Complaint arises from this transaction and asserts two causes of action, each governed by separate provisions of the SPA: first, claims relating to a post-closing earnout structure tied in part to the SD3 contract, and second, claims concerning protocols governing Defendant's contractually mandated issuance of approximately 200,000 shares of Voyager common stock ("Voyager Shares") to Plaintiffs.

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[4] *Id.* at ¶ 11.

[5] *Id.* at ¶ 13.

[6] *Id.* at ¶ 16. The copy of the SPA is available as Complaint Exhibit 1 (D.I. 1 Ex. 1) [hereinafter "SPA § ___"].

## A. The Earnout Dispute

### *1. Earnout Mechanics*

The SPA provides for two distinct potential post-closing earnout payments.[7] The first earnout (the "First Earnout") is calculated based on the cumulative value of contracts secured by ZIN (the "Actual Backlog") during the period spanning from January 1, 2023, to June 30, 2024 (the "First Earnout Period").[8] The second earnout (the "SD3 Earnout") is expressly contingent upon ZIN securing the NASA SD3 contract, and is calculated in reference to certain performance milestones achieved thereunder (the "SD3 Backlog") from July 1, 2024, through March 31, 2025 (the "SD3 Earnout Period").[9]

Section 2.6(c) of the SPA delineates the contractually mandated procedures governing the calculation, verification, and resolution of disputes regarding these metrics (the "Earnout Determination Procedure").[10] Under this framework, Defendant is required to deliver to Plaintiffs a statement setting forth its calculation of the applicable earnout metric (the "Proposed Earnout Measurement") within fifteen days following the expiration of the respective earnout period.[11] Thereafter,

[7] *Id.* at ¶ 20; *see* SPA § 2.6.

[8] *Id.*

[9] *Id.*

[10] SPA § 2.6(c).

[11] *Id.* at § 2.6(a).

Plaintiffs are afforded a thirty-day window to review the submission and deliver a written notice disputing the accuracy of Defendant's calculations (the "Dispute Notice").[12] To be contractually effective, the Dispute Notice must specify (i) the particular items and amounts in dispute, (ii) an alternative valuation or amount for each disputed item, and (iii) a revised calculation of the overall earnout.[13]

In the event that Plaintiffs fail to deliver a contractually compliant Dispute Notice within the prescribed thirty-day timeframe, the Proposed Earnout Measurement is "deemed irrevocably final and accepted by all parties."[14] Conversely, if a timely Dispute Notice is served, the parties must engage in good faith negotiations for a period of ten days.[15] If these negotiations fail, then the remaining disputed items must be submitted to a designated independent accounting firm (the "Accountant") for binding resolution.[16] The SPA clarifies the nature of this delegation, specifying that the Accountant is to act strictly as an expert rendering a narrow expert determination in accordance with Generally Accepted Accounting Principles ("GAAP") rather than as an arbitrator.[17]

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[12] *Id.* at § 2.6(c)(i).

[13] *Id.* at § 2.6(c)(iii).

[14] *Id.* at § 2.6(c)(ii).

[15] *Id.* at § 2.6(c)(iii).

[16] *Id.*

[17] *Id.* at § 2.6(c)(v).

### *2. The SD3 Contract Procurement Outcome*

On February 22, 2024, NASA announced that it would award SD3 to a third-party contractor rather than ZIN.[18] To facilitate an orderly dissolution of the operational partnership, NASA concurrently agreed to extend ZIN's preexisting Space Doc II contract through February 2025.[19]

### *3. The First Earnout Statement and Subsequent Negotiations*

On July 16, 2024—within the two-week window following the conclusion of the First Earnout Period—Defendant issued its Proposed Earnout Measurement for the First Earnout Period, calculating a total earnout obligation of $116,124.90.[20] Skeptical of this valuation, Plaintiffs requested that Defendant provide additional supporting financial documents, and the parties subsequently initiated informal discussions.[21] In early October 2024, Defendant advanced a new, higher adjusted earnout proposal.[22] Plaintiffs rejected this accommodation as insufficient.[23] Rather than executing the formal Earnout Determination Procedure, Plaintiffs transmitted a letter to Defendant accusing it of intentionally delaying the execution of four

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[18] Compl. ¶ 28. The Complaint erroneously states that NASA made this announcement on February 22, 2025. It was 2024.

[19] *Id.*

[20] *Id.* at ¶ 25.

[21] *Id.* at ¶ 26.

[22] *Id.*

[23] *Id.* at ¶ 27.

contracts until after the close of the First Earnout Period.[24] Notably, this correspondence did not conform to the structural or substantive mandates prescribed for a formal Dispute Notice as set forth in Section 2.6(c)(i) of the SPA. Although the parties continued to negotiate the earnout, they did not reach a resolution.[25]

### B. The Share Transfer Dispute

On the Closing Date, Defendant issued 216,090 Voyager Shares to Plaintiffs,[26] and Defendant's stock transfer agent subsequently issued an electronic stock certificate confirming Plaintiffs' ownership.[27] In January 2025, Defendant filed a registration statement for an IPO.[28] On May 5, 2025, Defendant requested that Plaintiffs sign a lock-up agreement committing not to sell their shares for a period of at least 180 days following the anticipated listing date of June 11, 2025 (the "Listing Date").[29] Plaintiffs declined.[30]

Instead, Plaintiffs instructed Defendant's stock transfer agent to clear their shares for trading on the Listing Date.[31] The transfer agent informed Plaintiffs that

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[24] *Id.* at ¶ 27.

[25] *Id.* at ¶ 49. Plaintiffs contend that Defendant "slow rolled" negotiations.

[26] *Id.* at ¶ 32.

[27] *Id.*

[28] *Id.* at ¶ 33.

[29] *Id.* at ¶ 34.

[30] *Id.*

[31] *Id.* at ¶ 37.

because the shares required an inter-platform transfer to facilitate public trading, such an instruction could only be processed by Defendant.[32]

Accordingly, Plaintiffs redirected their request to Defendant.[33] Defendant represented that it was undertaking the necessary "administrative steps" to release the shares for public sale.[34] Despite its failure to complete these administrative protocols prior to the Listing Date, Defendant proceeded with the IPO on June 11, 2025, without including Plaintiffs' shares.[35]

On June 25, 2025—two weeks later—Defendant informed Plaintiffs and other pre-IPO shareholders that it was continuing its efforts to process the release of the shares.[36] Ultimately, Defendant failed to make Plaintiffs' shares available for trading until July 22, 2025 (the "Share Access Date"), resulting in a 41-day delay.[37] During that time, the trading price of Voyager common stock declined from a high of $73.94 on the Listing Date to a high of $44.30 on the Share Access Date.[38]

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[32] *Id.*

[33] *Id.* at ¶ 38.

[34] *Id*. The Court notes that Defendant effectuated a stock split on June 1, 2025. *Id.* at ¶ 35. Plaintiffs went from 216,090 to 324,135 Voyager Shares. *Id.*

[35] *Id.* at ¶ 36.

[36] *Id.* at ¶ 40.

[37] *Id.*

[38] *Id.* at ¶ 51.

### C. Procedural History

Plaintiffs filed the Complaint on September 12, 2025,[39] asserting causes of action arising from both the earnout structures and the share transfer dispute.

With respect to the earnout, Plaintiffs allege that Defendant (i) breached the terms of the SPA by failing to remit the required Earnout Payments;[40] (ii) breached the implied covenant of good faith and fair dealing by intentionally deferring the execution of commercial contracts until after the expiration of the First Earnout Period;[41] (iii) committed fraud by deceptively delaying those contracts;[42] and (iv) committed fraud by manipulating accounting principles to artificially suppress the earnout calculations.[43] Regarding the stock transfer, Plaintiffs contend that Defendant's failure to timely release their shares for public trading constituted a breach of the implied covenant of good faith and fair dealing.[44]

On November 10, 2025, Defendant moved to dismiss for failure to state a claim under Superior Court Civil Rule 12(b)(6) (the "Motion").[45] Plaintiffs

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[39] *Id.* at ¶ 1.

[40] *Id.* at ¶¶ 44–45.

[41] *Id.* at ¶ 48.

[42] *Id.* at ¶ 56.

[43] *Id.* at ¶ 58.

[44] *Id.* at ¶ 53.

[45] *See* Motion (D.I. 10) ["Mot."].

responded on December 15, 2025 (the "Answering Brief"),[46] and Defendant replied on January 8, 2026 (the "Reply Brief").[47] The Court heard oral argument on May 6, 2026.[48] This decision follows.

## III. LEGAL STANDARD

In a Rule 12(b)(6) Motion to Dismiss, the Court must determine whether the claimant "may recover under any reasonably conceivable set of circumstances susceptible of proof."[49] The Court must accept as true all well-pled allegations.[50] Every reasonable factual inference will be drawn in the non-moving party's favor.[51] If the claimant may recover under that standard, the Court must deny the Motion to Dismiss.[52]

## IV. ANALYSIS

The Complaint asserts claims arising from two discrete contractual disputes: first, the propriety of Defendant's operational and accounting conduct during and after the First Earnout Period, and second, the timing of Defendant's release of

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[46] *See* Answering Brief (D.I. 11) ["Ans. Br."].

[47] *See* Reply Brief (D.I. 12) ["Reply Br."].

[48] The oral argument transcript ("Transcript") is available at D.I. 18. ["Tr."].

[49] *Spence v. Funk*, 396 A.2d 967, 968 (Del. 1978).

[50] *Id.*

[51] *Wilm. Sav. Fund. Soc'v, F.S.B. v. Anderson*, 2009 WL 597268, at *2 (Del. Super. Mar. 9, 2009) (citing *Doe v. Cahill*, 884 A.2d 451, 458 (Del. 2005)).

[52] *Spence*, 396 A.2d at 968.

Plaintiffs' Voyager Shares for public trading following the IPO. The Court addresses each in turn.

**A. The Earnout-Related Claims**

In contesting the earnout results, Plaintiffs challenge Defendant's calculation of the earnout *after* the First Earnout Period, and the operational management of ZIN *during* the First Earnout Period. Specifically, the Complaint alleges (1) breach of contract for failure to remit the full amount of the Earnout Payments,[53] (2) breach of the implied covenant of good faith and fair dealing based on Defendant's allegedly intentional deferral of contracts during the First Earnout Period,[54] and (3) fraud predicated on both the concealment of those delayed contracts and the deliberate manipulation of accounting metrics to induce Plaintiffs to accept an artificially deflated earnout figure.[55]

In support of its Motion, Defendant contends that *all* earnout-related claims should be dismissed without prejudice because Plaintiffs failed to comply with the Earnout Determination Procedure, which vests exclusive authority over such

[53] Compl. ¶ 45.

[54] *Id.* at ¶ 48.

[55] *Id.* at ¶¶ 57, 58.

disputes in the independent Accountant.[56] Alternatively, Defendant argues that each count fails to state a claim upon which relief can be granted under Rule 12(b)(6).[57]

Plaintiffs counter that because the Complaint generally alleges that Plaintiffs "continuously and faithfully performed their obligations under the SPA," they are relieved of any pleading-stage obligation to specifically allege compliance with the Earnout Determination Procedure.[58] Plaintiffs' position is legally untenable. It is a fundamental tenet of our law that "[a] claim is not ripe for consideration unless parties first exhaust an applicable contractual pre-suit dispute resolution process. . . . This Court will dismiss claims when a party fails to satisfy those contractual obligations."[59]

Accordingly, the Court's threshold inquiry is to determine which, if any, of Plaintiffs' allegations fall within the mandatory scope of the expert determination

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[56] *See* Tr. p. 16:16–23. Originally, Defendant argued that Plaintiffs *waived* their earnout-related claims when they failed to follow the Earnout Determination Procedure by issuing a timely Dispute Notice. *See* Mot. p. 11. Indeed, working purely from the SPA and the facts alleged, by failing to issue a Dispute Notice, Plaintiffs agreed that the Defendant's Proposed Earnout Measurement is the final and binding earnout determination. *See* SPA § 2.6(c)(ii). At oral argument, Defendant clarified that the parties had been informally negotiating the earnout at the time, and a determination that Plaintiffs have waived their ability to dispute the earnout measurement would not reflect the reality of the parties' bargain. *See* Tr. p. 6:7–22. To that end, Defendant represented that it was willing to disregard Plaintiffs' technical waiver of this issue and entertain a (belated) Dispute Notice instead. *See id.* at p. 16:16–23.

[57] Mot. p. 11.

[58] Ans. Br. p. 13 (quoting Compl. ¶ 43).

[59] *Lennox Indus. Inc. v. Alliance Compressors LLC*, 2020 WL 4596840, at *3 (Del. Super. Aug. 10, 2020) (dismissing as unripe claims not raised in pre-suit dispute resolution process). Because it is not necessary to resolve the present dispute, the Court does not parse pre-suit dispute resolution processes from expert determinations (which may be included therein).

framework and thus must be dismissed without prejudice.[60] For the reasons discussed below, the Court concludes that while Plaintiffs' earnout calculation claims must be submitted to the Accountant, their claims concerning Defendant's operational conduct during the First Earnout Period are properly before this Court.

### *1. Claims Arising from the Earnout Calculation are Dismissed.*

Delaware courts permit parties to allocate investigatory and decision-making authority to designated third parties by contract.[61] The jurisdictional scope of such delegations is situated along a defined legal spectrum; at one end, judge-like arbitrators exercise broad adjudicatory powers, and at the other specialized independent experts resolve discrete technical disputes using their professional expertise.[62]

In *Terrell v. Kiromic Biopharma, Inc.*, the Delaware Supreme Court established a strict three-step framework to determine whether a given dispute falls within a private third party's contractually delegated authority.[63] First, the Court

[60] Following dismissal, Plaintiffs would ideally resume the Earnout Determination Procedure and take these matters to the Accountant. However, the Superior Court does not have the authority to direct Plaintiffs to comply with these contractual commitments. *See Gen. Elec. Co. v. Star Techs.*, 1996 WL 377028, at *4 (Del. Ch. July 1, 1996) ("Since equity, rather than law, can provide the remedy of specific performance, the Court of Chancery, as opposed to the Superior Court, is the proper tribunal in which to bring an action to enforce an agreement to arbitrate.").

[61] *Mitchell Aircraft, LLC v. JPE Hldgs., LLC*, 2026 WL 2199263, at *5 (Del. Super. July 24, 2026).

[62] *Id.*

[63] *Id.* at *6. Like many such disputes, *Terrell* resolves a Rule 12(b)(1) motion to dismiss for lack of jurisdiction, not a Rule 12(b)(6) motion to dismiss, which Defendant invokes here.

must examine whether the governing provision unambiguously calls for an arbitrator.[64] Here, the SPA does not. Rather, the provision outlining the Accountant's responsibilities—Section 2.6(c)(v)—sets forth numerous restrictions on the Accountant's authority, expressly providing that the Accountant "will act as an expert in accounting, and not as an arbitrator, to resolve, in accordance with GAAP and this Agreement, only the matters specified in any timely delivered Dispute Notice that remain in dispute."[65] While the contract's self-selected labels of a third-party's role are not conclusively determinative,[66] the express disavowal of the arbitrator title paired with the Accountant's tightly circumscribed scope of review demonstrate that Section 2.6(c) establishes an expert determination framework rather than an arbitrator. Accordingly, the Court must look to traditional principles of contract interpretation to navigate the second step of the *Terrell* analysis: determining the contractual parameters of the expert's authority.[67]

The plain text of the SPA confines the Accountant's jurisdiction to two specific categories of post-closing earnout grievances: disputes concerning the mathematical accuracy of the Proposed Earnout Measurement, and contentions that

[64] *Id.*

[65] SPA § 2.6(c)(v)(A).

[66] *See I Am Athlete, LLC v. IM EnMotive, LLC*, 2024 WL 4904685, at *7 (Del. Super. Nov. 27, 2024) (concluding that a "Final Arbiter" was not an arbitrator because the governing provision lacked traditional arbitration language, constrained the Arbiter to resolving issues of "calculation," and required the parties to exhaust certain preliminary procedures before turning to the Arbiter).

[67] *Mitchell Aircraft*, 2026 WL 2199263, at *6.

the calculation failed to conform to the accounting methodologies set forth in the SPA.[68] In short, the parties authorized the Accountant to resolve any disagreement regarding the mechanical execution of the earnout formula to the extent such issues can be adjudicated using accounting conventions and GAAP.

Finally, at the third step, the Court must assess whether the specific claims asserted in the Complaint fall within this structural charter.[69] Plaintiffs' calculation grievances consist of two allegations: first, that Defendant intentionally injected external, uncontracted variables into the mathematical formula, and second, that Defendant distorted GAAP metrics.[70] Plaintiffs have packaged these allegations as a claim for breach of contract for failure to pay the correct earnout balance,[71] and as a claim for fraud alleging that the calculation was manipulated to deceive Plaintiffs into accepting a lower payment.[72] These claims, however styled, fall squarely within both the Accountant's contractual charter and the professional skillset of an independent financial expert.[73] Strip away the pejorative pleadings, and the core grievance remains a technical dispute over whether the Proposed Earnout

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[68] SPA § 2.6(c)(iv).

[69] *Mitchell Aircraft*, 2026 WL 2199263, at *8.

[70] *See* Compl. ¶ 58.

[71] *Id.* at ¶ 45; *see also* Ans. Br. p. 14. Defendant maintains that Plaintiffs have refused to provide their own calculations.

[72] Compl. ¶ 58.

[73] *Mitchell Aircraft*, 2026 WL 2199263, at *8.

Measurement was calculated in compliance with the accounting principles set forth in the SPA. Because these issues are reserved exclusively for the Accountant, to the extent Plaintiffs' claims for breach of contract and fraud arise from the calculation of the earnout, they are DISMISSED without prejudice to Plaintiffs' right to pursue them within the contractually mandated expert forum.

### 2. *Claims Arising from Defendant's Operational Conduct are Properly Before the Court.*

With the accounting and calculation-related allegations relegated to the expert determination process, the Court must address the single remaining category of earnout-related grievances. The Complaint alleges upon information and belief that while Defendant was operating ZIN during the First Earnout Period, it intentionally depressed the company's financial output—and as a direct consequence, the earnout threshold—by purposely deferring execution of the four Excluded Contracts until after the First Earnout Period had elapsed.[74] Plaintiffs maintain that this alleged tactical delay constitutes a breach of contract, a breach of the implied covenant of good faith and fair dealing, and/or actionable fraud.[75]

Grievances of this nature constitute classic "operational disputes" concerning the core management and day-to-day business choices of the acquired entity.[76]

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[74] *See* Compl. ¶¶ 48, 58.

[75] *Id.* at ¶¶ 45 (breach of contract), 48 (implied covenant), and 56 (fraud).

[76] *Mitchell Aircraft*, 2026 WL 2199263, at *8.

Because an evaluation of the business strategies turn on management discretion rather than purely financial mechanics, such controversies fall outside the narrow economical authority delegated to the Accountant.[77] Accordingly, Plaintiffs have appropriately brought these management-based claims directly to the Court for resolution. Because these operational allegations survive Defendant's initial procedural defenses, the Court must evaluate Defendant's alternative basis for dismissal: the failure to state a claim upon which relief can be granted under Rule 12(b)(6).

Typically, where claims are structurally bifurcated between an expert forum and a court of law, the Court must engage in a case-management assessment. Specifically, the Court weighs whether the properly raised claims are sufficiently pled to warrant discovery and whether such discovery should proceed immediately or be stayed pending the finality of the expert's accounting determination.[78] In the instant case, however, that procedural question is rendered entirely moot. As demonstrated below, none of Plaintiffs' operational earnout claims survive substantive review under the reasonable conceivability standard, leaving nothing to stay.

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[77] *See, e.g.,* SPA § 2.6(c)(iv) (delimiting Accountant's authority).

[78] *See Mitchell Aircraft*, 2026 WL 2199263, at *9 n.114 (concluding that efficiency favored proceeding with the action rather than staying for the expert to make its determinations first).

### *3. The Express Breach of Contract Claim is Inadequately Pled.*

To prevail on a breach of contract claim, a plaintiff must adequately allege: (1) an express contractual obligation; (2) a breach of that obligation; and (3) resulting damages.[79]

Defendant contends that Plaintiffs have failed to identify any express contractual provision that requires Defendant to engage in earnout-maximizing—or even earnout-neutral—conduct.[80] The Court agrees. The relevant provision of the SPA—Section 2.6(e) ("Section 2.6(e)")—unambiguously states that "nothing" contained in the Agreement shall "in any way limit or restrict" Defendant's post-closing operation of the business "provided that nothing in the [SPA] is intended to disclaim the Parties' respective duties of good faith and fair dealing."[81]

Before evaluating the sufficiency of the pleadings under this provision, the Court must resolve a threshold structural question that merits clarification: whether Section 2.6(e) creates an express contractual covenant to operate the business in good faith or whether it merely preserves the implied covenant of good faith and fair dealing.[82] Because Section 2.6(e) expressly references the duties of "good faith" and

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[79] *Jiggy Puzzles, LLC v. Steelhead Acq. EE, Inc.*, 2026 WL 465112, at *14 (Del. Super. Feb. 18, 2026) (citing *VLIW Tech., LLC v. Hewlett-Packard, Co.*, 840 A.2d 606, 612 (Del. 2003)).

[80] Mot. p. 15 ("Plaintiffs identify no contractual obligation that [Defendant] breached.").

[81] *Id.* at p. 18.

[82] This is a substantive distinction. "Breaching contractual provisions that require the exercise of good faith is not a breach of any implied covenant but rather a breach of the express covenants." *DDS Striker Hldgs., LC v. Verisk Analytics*, 2024 WL 3983973, at *6 (Del. Super. Aug. 29, 2024).

"fair dealing," a superficial reading might suggest that Defendant assumed an affirmative, express obligation to guide its operation of the company by a good faith standard. A holistic examination of the surrounding contractual context, however, reveals that the parties intended only to acknowledge and preserve the background *implied* covenant.

Section 2.6(e) vests in Defendant unrestricted discretion to conduct the business post-closing "provided that nothing *in this Agreement* is intended to *disclaim* the Parties' respective duties of good faith and fair dealing."[83] Two distinct textual features compel the conclusion that this proviso references the implied covenant rather than an express performance standard. First, the parties' use of the verb "disclaim" demonstrates an intent to preserve an already existing, background legal duty rather than create a novel, affirmative express covenant. Second, the prefatory phrase "provided that nothing in this Agreement" recognizes that the duty exists independently of the explicit text of the agreement, and cannot be modified or extinguished by it. Accordingly, the Court concludes that Section 2.6(e) functions solely as a non-disclaimer clause designed to preserve the implied covenant of good

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As indicated in *DDS Striker*, the analysis under an express covenant or the implied covenant is fundamentally different, with the implied covenant serving only to ensure that parties act in "good faith" to the agreement, not to their counterparties.

[83] SPA § 2.6(e) (emphasis added).

faith and fair dealing rather than an independent, express contractual commitment to act in "good faith."[84]

With Section 2.6(e) properly construed as a preservation clause rather than an express operational mandate, the SPA contains no other provision regulating Defendant's post-closing management of ZIN or directing the timing of contract executions. Because an express contractual obligation is an indispensable element of a breach of contract claim, Plaintiffs have failed to plead an actionable express breach of contract arising out of the allegedly deferred execution of the Excluded Contracts. Accordingly, Plaintiffs' express breach of contract claim as to the operational earnout dispute is DISMISSED, and the Court turns to the implied covenant framework to address Plaintiffs' concerns.

***4. The Operational Implied Covenant Claim is Inadequately Pled.***

Like the claim for express breach of contract, Plaintiffs' claim for breach of the implied covenant of good faith and fair dealing with respect to Defendant's operational choices is fatally flawed. Defendant argues that this claim must be

[84] *See Miller v. HCP & Co.*, 2018 WL 656378, at *8 (Del. Ch. Feb. 1, 2018) (analyzing an agreement with an express invocation of the implied covenant of good faith and fair dealing as acknowledging the implied covenant rather than creating an express commitment to act in good faith). To be sure, the language in *Miller* is not the same as the language here. There, the contract—an LLC agreement—states that the LLC managers disclaimed all duties, "provided, however, that the Board of Managers shall have the duty to act in accordance with the implied contractual obligation of good faith and fair dealing." *Id.* at n.110. While *Miller* refers directly to the "implied" covenant, and the language in Section 2.6(e) does not, Section 2.6(e) nevertheless acknowledges an existing right that does not arise from the contract language itself. This serves a similar function to the language in *Miller*, so the Court treats them similarly.

dismissed because Plaintiffs have failed to identify a distinct contractual gap that could support an implied obligation to act in good faith, or even to refrain from acting in a way that could incidentally impact the earnout negatively.[85] Defendant positions Section 2.6(e) as an expansive grant of management authority, maintaining that so long as it did not engage in subjective bad faith—i.e., actively harming the company to depress the earnout[86]—it retained no affirmative duty to alter its commercial timing to benefit the earnout.[87] To hold otherwise, Defendant notes, would disturb the parties' contractual architecture by awarding Plaintiffs a sweeping, un-bargained-for operational diligence requirement that they failed to secure at the bargaining table.[88]

Plaintiffs counter that the purpose of the implied covenant is to ensure that a contracting party's legitimate expectations are not retroactively frustrated.[89] They contend that given the early stage of this litigation, the Court cannot determine as a matter of law that Defendant's allegedly deliberate pacing of the Excluded Contracts did not subvert a fundamental understanding essential to the fruits of the bargain.[90]

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[85] Mot. p. 18.

[86] *See Meyers v. Zimmer Biomet Hldgs., Inc.*, 2026 WL 1194997, at *1 (Del. Ch. May 1, 2026).

[87] Mot. p. 18.

[88] *Id.* at p. 19.

[89] Ans. Br. p. 16.

[90] *Id.* at p. 17.

The law governing the implied covenant of good faith and fair dealing is clear. The implied covenant operates as a narrow "gap-filler" embedded in every contract.[91] It allows a court to infer a missing contractual term in order to protect parties from unreasonable or arbitrary acts that frustrate the fruits of the bargain the parties originally made.[92] Because it acts as an "extraordinary legal remedy," its application represents a "cautious enterprise," and it is only rarely invoked with success.[93]

Courts typically fill a contractual gap with an implicit term to (i) prevent parties from exploiting their discretion to defeat the overarching purpose of the bargain, or (ii) address "unforeseen" contingencies that threaten the parties' bargained-for expectations.[94] Baked into the latter category are gaps created by any "understandings or expectations" rendered unforeseeable to the parties because the terms "were so fundamental that they did not need to negotiate those expectations."[95]

Plaintiffs' operational claim fails because the Complaint cannot identify an actionable gap in the text of the SPA. Where, as here, the claim hinges on a buyer's

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[91] *Johnson & Johnson v. Fortis Advs.*, 352 A.3d 229, 253 (Del. 2026).

[92] *Id.*

[93] *Nemec v. Shrader*, 991 A.2d 1120, 1125 (Del. 2010) (quoting *Dunlap v. State Farm Fire & Cas. Co.,* 878 A.2d 434, 441 (Del. 2005)).

[94] *Johnson & Johnson*, 352 A.3d at 253.; *see also Osios LLC v. Tiptree, Inc.*, 2024 WL 2947854, at *5 (Del. Ch. June 12, 2024) (noting "two strains" of implied covenant case law).

[95] *Facilities Hldgs, LLC v. ASM Global Parent, LLC*, -- A.3d ----, 2026 WL 1815842, at *9 (Del. Ch. June 24, 2026) (quoting in full *Dieckman v. Regency GP LP*, 155 A.3d 358, 368 n.26 (Del. 2017)).

post-closing discretionary operation of an acquired entity, courts first look to any contractual language setting parameters on the buyer's post-closing conduct.[96] Section 2.6(e) of the SPA explicitly states:

> Except as expressly set forth in writing in this Agreement, nothing in this Agreement will in any way limit or restrict the business practices or decisions of Purchaser or its Affiliates, including the Acquired Companies, following the Closing; provided that nothing in this Agreement is intended to disclaim the Parties' respective duties of good faith and fair dealing.[97]

The Court of Chancery addressed similar language in *Meyers v. Zimmer Biomet Holdings, Inc.*[98] In that decision, which incorporates the precepts set forth in *Johnson & Johnson*, the Court concluded that when a contract expressly outlines the parameters of a buyer's post-closing operational discretion—and that discretion is bounded by explicit carve-outs—there is no contractual gap for the Court to fill.[99] When sophisticated parties negotiate express terms and limitations of post-closing management authority, the judiciary will not utilize the implied covenant to override those provisions or retroactively insert separate, independent earnout provisions.[100]

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[96] *See Meyers*, 2026 WL 1194997, at *11.

[97] SPA § 2.6(e).

[98] *Meyers*, 2026 WL 1194997, at *11. The use of 2026 cases is particularly important in the context of the implied covenant because of the Supreme Court's clarification of the principle in *Johnson & Johnson.*

[99] *Meyers*, 2026 WL 1194997, at *11.

[100] *Id.*

In the contract at issue, the parties agreed that Defendant would enjoy nearly unchecked operational flexibility, subject only to the background obligations preserved by the implied covenant.[101] This distinct structural arrangement introduces a textual paradox. While the implied covenant exists to fill unaddressed gaps in a contract, the express invocation of the covenant as a delimiter of party discretion effectively eliminates the very gap it is theoretically designed to occupy. Rather than leaving Defendant's operational authority unaddressed, the contract installs an express boundary line: conduct that actively violates the preserved standard of good faith and fair dealing.

Plaintiffs seek to navigate this paradox by arguing that the non-disclaimer clause operates as an affirmative representation that Defendant would not operate ZIN in subjective bad faith.[102] However, well-established jurisprudence prevents a plaintiff from conflating an implied gap-filling tool with an express, substantive standard of care.[103]

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[101] SPA § 2.6(e).

[102] Ans. Br. p. 20.

[103] Reply Br. p. 9. In *Meyers v. Zimmer Biomet Holdings, Inc.*, the Court of Chancery noted—in concluding that a buyer's conduct did not violate the implied covenant—that, "[i]mportantly, the implied covenant may prohibit a buyer from intentionally harming the business in an effort to avoid an earnout payment, but it does not require a buyer 'to do everything it c[an] to increase the earn-out payments.'" 2026 WL 1194997, at *1 (quoting *Winshall v. Viacom Int'l, Inc.*, 55 A.3d 629, 638 (Del. Ch. 2011), *aff'd*, 76 A.3d 808 (Del. 2013)). To that end, the question before the Court is whether Plaintiffs—in contending that Defendant should not have delayed contracts in order to decrease the earnout—are seeking to remediate truly bad faith conduct or rewrite the terms of the contract to be more favorable to them.

Further, even if there was a contractual gap regarding Defendant's post-closing operational timing, the alleged pacing of the agreements would not constitute a breach of an implied term. A central pillar of any implied covenant inquiry is foreseeability. In the context of a corporate acquisition featuring a time-delineated earnout structure, few operational strategies are more thoroughly foreseeable than a buyer deferring or pacing the execution of pending commercial agreements until after the earnout window closes. Because the parties could have easily negotiated express diligence milestones, minimum performance thresholds, or acceleration clauses to govern the timing of the Excluded Contracts, the Court will not deploy the implied covenant to rewrite the contract or insert a protective mechanism that Plaintiffs failed to secure at the bargaining table. Accordingly, to the extent that Plaintiffs' claim for breach of the implied covenant of good faith and fair dealing arises from the alleged deferral of the Excluded Contracts, it is hereby DISMISSED.

#### 5. *The Complaint Fails to State a Claim for Fraud.*

In its third and final dispute under the earnout umbrella, Plaintiffs contend that Defendant's exclusion of the Excluded Contracts from the Actual Backlog constitutes fraud because Defendant allegedly deliberately concealed these prospective agreements to artificially suppress the resulting earnout payment.[104]

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[104] Compl. ¶ 57.

Defendant responds that this claim is not pled with the requisite particularity under Superior Court Civil Rule 9(b) and, in any event, is legally barred by the economic loss doctrine.[105]

To succeed on a claim of fraud, a plaintiff must sufficiently allege "(1) the defendant falsely represented or omitted facts that the defendant had a duty to disclose; (2) the defendant knew or believed that the representation was false or made the representation with a reckless indifference to the truth; (3) the defendant intended to induce the plaintiff to act or refrain from acting; (4) the plaintiff acted in justifiable reliance on the representation; and (5) the plaintiff was injured by its reliance."[106]

At the pleading stage, Rule 9(b) imposes a heightened pleading standard, mandating that "the circumstances constituting fraud . . . shall be stated with particularity."[107] The factual circumstances that must be stated with particularity refer to "the time, place, and contents of the false representations; the facts misrepresented; the identity of the person(s) making the misrepresentation; and what that person(s) gained from making the misrepresentation."[108]

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[105] Mot. p. 21.

[106] *DCV Hldgs. Inc. v. ConAgra, Inc.*, 889 A.2d 954, 958 (Del. 2005).

[107] Super. Ct. Civ. R. 9(b).

[108] *Airborne Health, Inc. v. Squid Soap, LP*, 984 A.2d 126, 142 (Del. Ch. 2009).

Where a fraud claim is predicated on a theory of fraudulent concealment or omission, the plaintiff must go further and allege: "(1) deliberate concealment by the defendant of a material past or present fact, or silence in the face of a duty to speak, (2) the defendant acted with scienter, (3) an intent to induce the plaintiff's reliance upon the concealment, (4) causation, and (5) damages resulting from the concealment."[109] Moreover, if a claim "has at its core . . . that the defendant knew something," then the claim must include "sufficient well-pled facts from which it can reasonably be inferred that this 'something' was knowable and that the defendant was in a position to know it."[110]

Plaintiffs argue that the "circumstances constituting fraud" occurred on July 16, 2024, when Defendant sent Plaintiffs its Proposed Earnout Measurement.[111] Because that statement reflected only three executed commercial contracts and omitted the four pending Excluded Contracts, Plaintiffs maintain that its submission operates as an affirmative misrepresentation and deliberate concealment.[112]

Defendant responds that its statement was factually accurate when made; at the close of the First Earnout Period, only three contracts had been executed, and the

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[109] *Doe v. Massage Envy Franchising, LLC*, 2024 WL 320281, at *21 (Del. Super. June 28, 2024).

[110] *Id.*

[111] Ans. Br. p. 27; *see also* Compl. ¶ 25.

[112] *Id.*

remaining agreements were merely prospective.[113] Furthermore, Defendant argues, it did not have a duty to disclose what was happening with other prospective contracts because Plaintiffs failed to negotiate for real-time information or operational tracking rights under the SPA.[114]

The Court agrees with Defendant. A claim for fraud by deliberate concealment requires an affirmative action of a deceptive nature—some artifice or active misrepresentation designed to mollify suspicions, prevent inquiry, or obstruct the discovery of facts.[115] Plaintiffs simply do not allege an affirmative act, artifice, or representation intended to prevent the discovery of the Excluded Contracts. At most, the allegations suggest that Defendant had an economic incentive to minimize the earnout metric but fails to allege facts supporting an inference that Defendant engaged in an affirmative act to conceal the Excluded Contracts or otherwise had a duty to disclose its post-closing operational decisions regarding ZIN's prospective contracts.[116] This pleading deficiency fails to satisfy Rule 9(b)'s demanding standard. Because Plaintiffs have failed to meet the baseline pleading requirement for fraudulent concealment, the Court need not reach Defendant's alternative

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[113] Reply Br. p. 18 n.10.

[114] *Id.* at p. 19.

[115] *Metro Commc'n Corp. BVI v. Advanced Mobilecomm Techs. Inc.*, 854 A.2d 121, 150 (Del. Ch. 2004).

[116] *See Mosaic US Hldgs LLC v. Atlas Tech. Sols, Inc.*, 2025 WL 483064, at *8 (Del. Super. Jan. 22, 2025) (setting forth standard).

argument regarding the economic loss doctrine.[117] Accordingly, to the extent it arises from the Excluded Contracts, the fraud claim is DISMISSED.

For the foregoing reasons, Plaintiffs' claims related to the calculation of the earnout are DISMISSED without prejudice. Plaintiffs' breach of contract, breach of the implied covenant of good faith and fair dealing, and fraud claims arising from Defendant's operational conduct during the earnout are DISMISSED.

### B. The Share Transfer Dispute

Independent of their earnout grievances, Plaintiffs assert a separate claim that Defendant breached the implied covenant of good faith and fair dealing by deploying its technical and administrative control over the share-transfer process to effectively lock up Plaintiffs' equity.[118] Specifically, Plaintiffs contend that Defendant obstructed them from liquidating their Voyager Shares until more than a month after the closing of Defendant's IPO.[119] Plaintiffs' argument rests on a compelling contractual conceptual premise: that the acquisition of equity as partial consideration for the sale of their company inherently carries an implicit foundational right to sell those shares in an IPO, should one occur.[120]

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[117] That said, Defendant also contends that the economic loss doctrine would render any attempted amendment futile. Reply Br. p. 20 n.13. The Court will address this argument should Plaintiffs seek leave to amend.

[118] Compl. ¶¶ 29–40 (allegations), 52–54 (cause of action).

[119] *Id.*

[120] *Id.*

Consequently, Plaintiffs maintain, by moving ahead with an IPO while maintaining a technical block on their stock, Defendant deprived Plaintiffs of their bargained-for benefit to use the shares they owned.[121] Two factual allegations undergird this claim and are particularly critical to the Court's evaluation under the reasonable conceivability standard. First, prior to the IPO, Defendant asked Plaintiffs to execute a lock-up agreement committing not to sell their shares for a period of 180 days following the Listing Date.[122] Plaintiffs explicitly declined to execute this restriction.[123] Second, Defendant never formally denied Plaintiffs' administrative requests to clear their shares for public trading; instead, Defendant represented that it was actively undertaking the necessary administrative steps to release the shares, yet deliberately proceeded to launch the IPO, even though it had not completed this internal process.[124] The economic injury flowing from this administrative delay is stark: by the time the Plaintiffs were ultimately granted access to trade their shares, the per-share market value had fallen from an IPO high of $73.94 to only $44.30—the result of a 41-day delay.[125]

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[121] *Id.*

[122] *Id.* at ¶ 34.

[123] *Id.*

[124] *See id.* at ¶ 38.

[125] *Id.* at ¶ 51.

Defendant pushes back forcefully on this narrative, arguing that the implied covenant framework is inapplicable to these mechanics.[126] In Defendant's view, the administrative timing of share-clearance protocols represents a standard transactional risk that Plaintiffs could—and should—have secured through express contractual language concerning strict operational deadlines.[127] Because Plaintiffs failed to negotiate specific time-of-the-essence rules for transfers under the SPA, Defendant claims that Plaintiffs cannot now invoke the implied covenant to retroactively secure a protective mechanism for which they failed to bargain.[128]

The Court has already set forth the driving principles of the implied covenant above.[129] While the Court previously examined the broad operational discretion explicitly conferred upon Defendant with respect to the post-closing operation of ZIN, the share-transfer controversy presents a fundamentally different structural question. Here, the Court must determine whether an implicit commitment to execute mechanical, ministerial share-clearing tasks without inventing arbitrary administrative delays is an obligation so fundamental and obvious that it went

[126] Reply Br. pp. 12–13.

[127] *Id.*

[128] *Id.*

[129] In short, to successfully raise an implied covenant claim a party's pleading must (1) allege a contractual gap that should be filled by a specific implied contractual obligation, and (2) allege how the violation of that obligation denied the plaintiff the fruits of the contract. *Kuroda v. SPJS Hldgs., Inc.*, 971 A.2d 872, 888 (Del. Ch. 2009); *see also Monica v. Delta Data Software, Inc.*, 2026 WL 370756, at *7 n.72 (Del. Super. Feb. 10, 2026) (noting that a party must allege a gap and set forth a term appropriate to fill it).

without saying, or whether the risk of administrative sequencing was a foreseeable operational hazard that Plaintiffs failed to negotiate.

As an initial matter, the Court finds that the Complaint sufficiently identifies an actionable contractual gap. The SPA is completely silent regarding the precise chronological window within which Defendant was required to process the administrative clearance of the Voyager Shares in anticipation of a public listing. Indeed, Defendant concedes that the SPA itself does not contain a "timing requirement" for when Plaintiffs could "receive" the shares they secured in the acquisition.[130]

In its Reply Brief, Defendant attempts to overcome this omission by arguing that the parties' overarching agreement fully addresses the issue of illiquidity.[131] Specifically, Defendant points to the parties' contemporaneous Redemption Rights Side Letter, which granted Plaintiffs an explicit right to compel Defendants to repurchase their shares at a predetermined price if an IPO failed to materialize before September 2025.[132] Defendant posits that because Plaintiffs successfully bargained for a structural exit option in the event an IPO was not forthcoming, their failure to secure a parallel express provision allowing them to be able to sell their shares on

[130] *See* Mot. pp. 28–29.

[131] Reply Br. pp. 12–13.

[132] *Id.*

the Listing Date is fatal to their claims.[133] Under Defendant's theory, the risk of post-IPO administrative delays was foreseeable and the Court should not use the implied covenant to supplement a contract that already contains negotiated liability terms.[134] This argument is unpersuasive. The Redemption Rights Side Letter functions strictly as a contractual safety net designed to protect Plaintiffs if Defendant elected *not* to take the company public. That the parties proactively provided for a failure to list does not support the inference that they contemplated, let alone allocated, the administrative operational hazards that could arise with a successful public offering. A provision addressing the complete absence of a public market cannot seamlessly serve as an intentional allocation of administrative rights and timelines once the market is successfully created.

Having concluded that a contractual gap conceivably exists regarding the timeline for listing shares, the Court arrives at the core of the inquiry: whether it is conceivable that Plaintiffs' right to sell their shares during or shortly after the IPO was so obvious that the need to negotiate it would have been unforeseeable. The Court of Chancery recently examined a similar issue in *Facilities Holdings, LLC v. ASM Global Parent, LLC*.[135] In that decision, the Court noted that under the governing legal standard, an implied term must "be so obvious as to go without

[133] *Id.*

[134] *Id.*

[135] 2026 WL 1815842, at *11.

saying or to be necessary for business efficacy."[136] To test whether a purported obligation meets this threshold, jurisprudence often invokes the classic heuristic of the "officious bystander."[137] If an imaginary, detached observer to the parties' negotiations were to interject and suggest the express inclusion of the provision, the contracting parties would "testily suppress him with a common, 'Oh, of course!'"[138] This rhetorical device neatly captures the true restrictive boundaries of the implied covenant. The use of terms like "officious" and "testily suppress" illustrate that an implied obligation must be more than merely reasonable or fair; it must represent a baseline reality so blindingly obvious that the parties would find the suggestion that it needs to be codified redundant, if not downright offensive.[139]

To survive a motion to dismiss, the Court must conclude that the asserted implicit term is so obvious that it is conceivable a dispute over it would have been unforeseeable to the parties at the time of contracting. This evaluation implicates a doctrinal tension inherent to the current procedural posture. Pulling in one direction is the highly permissive, plaintiff-friendly nature of the "reasonably conceivable" standard under Rule 12(b)(6). Pulling in the opposite direction is the Delaware Supreme Court's unequivocal mandate in *Johnson & Johnson v. Fortis Advisors*

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[136] *Id.* (internal citation omitted).

[137] *Id.*

[138] *Id.* (quoting in full *Shirlaw v Southern Foundries (1926) Ltd* [1939] 2 KB 206, 227).

[139] *Id.*

*LLC*, that Delaware courts should wield the implied covenant not only cautiously, but "surgically."[140]

Recent decisions from the Delaware trial courts offer valuable guidelines for navigating this dynamic. Returning to *Facilities Holdings, LLC v. ASM Global Parent, LLC*, the case that introduced the "officious bystander" analog to this specific context, the Court of Chancery denied a motion to dismiss because it found a "foundational understanding" embedded within the agreement that a party would not secretly take affirmative steps to undermine its own transaction by lobbying a third-party stakeholder to withhold its consent to the governing agreement.[141] Applying the "bystander" heuristic, the Court observed—somewhat wryly—that a primary reason such an implicit term is conceivably obvious and unnegotiated is that commercial actors operating under such an adversarial, low-trust dynamic would likely forgo entering a joint business enterprise altogether.[142]

Similarly, in *Monica v. Delta Data Software, Inc.*, this Court concluded that even absent an "efforts" clause, a provision making an earnout contingent on the timing of certain customer payments contained a gap regarding the "range of action" the defendant "must or is prohibited from taking when it comes to collection of

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[140] *Johnson & Johnson*, 352 A.3d at 254.

[141] *Facilities Hldgs., LLC*, 2026 WL 1815842, at *12.

[142] *Id.*

payments."[143] Whatever term filled that gap, the Court held it reasonably conceivable that the buyer breached the implied covenant when it engaged in "affirmative acts to avoid receiving customer payments" until after the deadline had expired.[144]

Conversely, in *Prosser v. Pharmalogic Holdings Corporation*, this Court granted dismissal under Rule 12(b)(6), holding that it was inconceivable that an express provision allocating liability for pre-transaction underpaid taxes could implicitly carry a reciprocal right to receive post-closing refunds from that same period.[145] The Court assumed that the plaintiffs could and should have anticipated the possibility of a tax windfall during negotiations and simply chose not to press the issue—leaving an un-bargained-for omission that the Court refused to disturb.[146] This outcome perfectly tracks the "officious bystander" test. An interjection by a detached observer suggesting that the parties explicitly designate a recipient for prospective tax refunds would not be "testily suppressed" as redundant; rather, it would be recognized as a natural bargaining chip that a sophisticated party would proactively raise to protect its financial position. Such an inquiry would imply a standard desire for thoroughness, not an offensive lack of trust.

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[143] 2026 WL 370756, at *7 (Del. Super. Feb. 10, 2026).

[144] *Id.*

[145] *Prosser v. Pharmalogic Hldgs. Corp.*, 2026 WL 1958134, at *15 (Del. Super. July 7, 2026).

[146] *Id.*

Read as a whole, the allegations in the instant action case align far more closely with the disruptive paradigms of *Facilities Holdings* and *Monica* than the bargained-for risk allocation in *Prosser*. *Monica* is particularly instructive here. In that dispute, the defendant agreed to an earnout calculated by customer revenue and, as the acquirer of the underlying business, had the exclusive ability to collect that revenue.[147] By allegedly taking affirmative steps to circumvent its own administrative commitment, it conceivably breached the implied covenant.[148]

The allegations before the Court here are arguably more compelling. Much like the buyer in *Monica* leveraging its administrative control over the company to delay collections, Defendants here allegedly used its administrative, non-discretionary control over the share clearance protocols to artificially delay the shares' release. Taking the Complaint's allegations as true, it is conceivable that, for purposes of the SPA, the operational transfer of purchased equity from one share transfer agent to another was a purely mechanical ministerial exercise, not an opportunity for business judgment. For tasks of this nature, Defendant was afforded no contractual discretion under the SPA and, if it desired the flexibility to restrict liquidity or sequence the release of shares, it was required to secure that right through an express lock-up provision at the bargaining table. Having attempted to secure a

[147] *Monica*, 2026 WL 370576, at *7.

[148] *Id.*

similar, albeit longer, lock-up without success, Defendant cannot exploit a silent technical obligation to achieve the same economic restrictions through administrative foot dragging.

This conclusion is further validated by the "officious bystander." The parties clearly contemplated that Plaintiffs might liquidate their shares by listing them publicly. Otherwise, they would not have contracted for a buyback if no IPO occurred. Within this context, it is certainly conceivable that an express demand that Defendant commit to list the shares in the public offering following a request made well in advance of the Listing Date constitutes the sort of trustless hyper-contracting that the implied covenant guards against.

The Court concludes with an important procedural caveat. The Delaware Supreme Court's ruling in *Johnson & Johnson* firmly underscores that the implied covenant functions narrowly and should be deployed rarely. Although this rigorous guidance, and the subsequent trial-court decisions reckoning with it, has heavily informed the Court's analysis, the parties were not able to enjoy the benefit of briefing these issues, as the Supreme Court's opinion was issued after the Complaint was finalized. Plaintiffs could not proactively structure their pleadings around its specific surgical structures. To that end, while this claim remains actionable as presently alleged, the factual record is nevertheless threadbare. Discovery will reveal whether Defendant's administrative delays were driven by genuine technological hurdles or whether they represent an intentional, bad-faith exploitation of purely administrative obligation. At this stage, however, Plaintiffs have alleged enough to survive dismissal.

## V. CONCLUSION

For the reasons set forth herein, Defendant's Motion to Dismiss pursuant to Superior Court Civil Rule 12(b)(6) is GRANTED in part and DENIED in part. Plaintiffs' express breach of contract and fraud claims arising from the accounting methodologies and mathematical calculations of the First Earnout Period are DISMISSED without prejudice to Plaintiffs' right to pursue those narrow financial challenges before the contractually designated expert Accountant. Concurrently, Plaintiffs' express breach of contract, breach of the implied covenant of good faith and fair dealing, and fraud claims arising from Defendant's post-closing operational stewardship of ZIN and the timing of the Excluded Contracts are DISMISSED with prejudice for failure to state a claim upon which relief can be granted. Finally, Defendant's Motion to Dismiss the implied covenant of good faith and fair dealing claim arising from the 41-day delay in processing the post-IPO share transfer is DENIED.

**IT IS SO ORDERED.**

Sheldon K. Rennie, Judge