IN THE COURT OF CHANCERY OF THE STATE OF DELAWARE

MERA USA, LLC

Plaintiff,

v.

MCS BURBANK, LLC

Defendant.

MCS BURBANK, LLC, individually and derivatively on behalf of MERA RD LLC,

Counterclaim-Plaintiff/ Third-Party Plaintiff,

v.

MERA USA LLC,

Counterclaim-Defendant,

and

MERA RD2, LLC, MERA RD3, LLC, MERA RD4, RAPHAEL AQUIRRE and ALEX MOLET WARSCHWASKI

Third-Party Defendants,

and

MERA RD LLC,

Nominal Third-Party Defendant.

C.A. No. 2024-0188-MTZ

MEMORANDUM OPINION

Date Submitted: May 29, 2026
Date Decided: August 28, 2026

Sarah R. Martin, GREENBERG TRAURIG, LLP, Wilmington, Delaware; Justin K. Victor, Richard F. Walker, GREENBERG TRAURIG, LLP, Atlanta, Georgia, *Attorneys for Plaintiffs, Counterclaim Defendant, and Third-Party Defendants MERA USA, LLC, MERA RD2, LLC, MERA RD3, LLC, MERA RD4, Rafael Aquirre, and Axel Molet Warschawski*.

Peter H. Kyle, Caleb G. Johnson, Daniel P. Klusman, DLA PIPER LLP (US), Wilmington, Delaware, Eduardo G. Roy, PROMETHEUS PARTNERS LLP, San Francisco, California, *Attorneys for Defendant/Counterclaim-Plaintiff MCS Burbank, LLC.*

ZURN, Vice Chancellor.[1]

[1] Sitting by designation under Del. Const. art. IV, § 13(2). Docket item ("D.I.") 127.

Two groups formed a joint venture to operate in the airport concessions market at Raleigh-Durham International Airport ("RDU"). The venture's limited liability company consisted of one majority member and two minority members. The relationship soured quickly, then ended when the majority member removed one of the minority members from the LLC. That minority member asserts that the majority member, its affiliated special purpose entities, and their human representatives schemed for years to use the minority member to enter the U.S. airport concessions market with the intention to squeeze the minority member out.

On the defendants' motion to dismiss, this opinion trims the minority member's many legal theories down to a breach of contract claim against the majority member. The Court has limited personal jurisdiction over the majority member's human representatives; there are no claims against the affiliated special purpose entities; and the parties' contracts foreclose claims for fraud, estoppel, and breach of the implied covenant.

I. BACKGROUND[2]

Defendant/counterclaim-plaintiff MCS Burbank, LLC ("MCS") is a certified Airport Concessions Disadvantaged Business Enterprise ("ACDBE") that operates

[2] Unless otherwise noted, the facts as alleged are drawn from counterclaim-plaintiff MCS Burbank, LLC's Third Amended and Supplemental Verified Counterclaims, available at Docket Item ("D.I.") 60 [hereinafter "TACC"], as well as the documents attached and integral to it. *See Wal-Mart Stores, Inc. v. AIG Life Ins. Co.*, 860 A.2d 312, 320 (Del. 2004).

Third party defendants Rafael Felipe de Jesus Aguirre Gomez and Axel Molet Warschawski submitted affidavits in support of their motions to dismiss under Court of Chancery Rules 12(b)(2) and 12(b)(6). D.I. 72, Ex. 1 [hereinafter "Gomez Aff."]; *id.* Ex. 3 [hereinafter "Warschawski Aff."]. Nonparty Rafael Aguirre De La Torre also submitted an affidavit. *Id.* Ex. 2 [hereinafter "De La Torre Aff."]. The De La Torre Affidavit and Warschawski Affidavit also had several exhibits attached. *See* D.I. 72. On the Rule 12(b)(6) motion, I have considered the exhibits only if those documents are integral to MCS's counterclaims; I have not considered the affidavits. *Addy v. Piedmonte*, 2009 WL 707641, at *6 (Del. Ch. Mar. 18, 2009). On the Rule 12(b)(2) motion, I have considered the affidavits and exhibits solely to determine if each moving defendant is subject to this Court's jurisdiction. *Ryan v. Gifford*, 935 A.2d 258, 265 (Del. Ch. 2007).

Citations in the form "MOB" refer to counterclaim-defendant MERA USA, LLC's Opening Brief in support of its Partial Motion to Dismiss Counterclaim-Plaintiff MCS Burbank, LLC's Third Amended and Supplemental Verified Counterclaims, available at D.I. 69. Citations in the form "TOB" refer to Third Party Defendants' Opening Brief in support of their Motion to Dismiss the Third Amended and Supplemental Verified Counterclaims under Rules 12(b)(2) and 12(b)(6), available at D.I. 72. Citations in the form "AB" refer to MCS Burbank, LLC's Consolidated Answering Brief in Opposition to (i) Counterclaim Defendant Mera USA, LLC's Partial Motion To Dismiss, and (ii) Third-Party Defendants' Motion to Dismiss Pursuant to Rules 12(b)(2) and 12(b)(6), available at D.I. 113. Citations in the form "MRB" refer to Mera USA's Reply Brief in Further Support of Motions to Dismiss for Failure to State a Claim, available at D.I. 115. Citations in the form "TRB" refer to Third Party Defendants' Reply Brief in Further Support of Motion to Dismiss for Lack of Personal Jurisdiction and Failure to State a Claim, available at D.I. 117. Citations in the form "Hr'g Tr." refer to the transcript of the oral argument on the motions to dismiss, available at D.I. 126.

in airports in the United States.[3] The Federal Aviation Administration's ("FAA") ACDBE program is federally funded and regulated under 49 C.F.R. Parts 23 and 26.[4]

MCS partnered with plaintiff/counterclaim-defendant MERA USA, LLC ("MERA") to operate concessions at multiple airports. MCS alleges MERA, MERA RD2, LLC ("RD2"), MERA RD3, LLC ("RD3"), MERA RD4 ("RD4"), Rafael Felipe de Jesus Aguirre Gomez ("Gomez"),[5] and Axel Molet Warschawski (without MERA, "Third-Party Defendants," and with MERA, "Counterclaim Defendants") orchestrated a scheme to induce MCS to partner with MERA so that

---

[3] TACC ¶ 16.

[4] TACC ¶¶ 13, 16.

[5] The Third-Party Defendants expressed their understanding that by naming "Raphael Aquirre" in the caption, MCS intended to sue Raphael Aguirre De La Torre, not Rafael Felipe de Jesus Aguirre Gomez. TOB at 1 n.1. But the weight of MCS's papers indicate it intended to sue Gomez. TACC ¶ 8 ("Mr. Aguirre [] was the Chief Executive Officer of MERA" and was "a manager of the Joint Venture"); AB at 8 ("Third-Party Defendant Rafael Felipe de Jesus Aguirre Gomez is the Chairman and Chief Executive Officer of Mera USA. Mr. Aguirre also is a manager of the Joint Venture." (citing TACC ¶ 8)); *id.* at 11 ("Mr. Aguirre is a principal and owner of MERA USA."); *id.* at 56 ("Counterclaim Defendants are part of a single joint enterprise controlled by Mr. Aguirre, and are agents, employees, and representatives of Mr. Aguirre's entities. . . . [T]he Mera Affiliates are indirectly owned by Mr. Aguirre . . . ."); *id.* at 58 ("Mr. Aguirre concedes that he owns [MERA] through another entity he wholly controls." (citing Gomez Aff. ¶¶ 5–6)); Gomez Aff. ¶¶ 3, 6, 8 (providing Gomez is the indirect beneficial owner of MERA, and controls the parent entities that control Mera Hollywood, LLC, Mera RD, LLC, RD2, and MERA); Gomez Aff. ¶¶ 5–6 (stating that the "Sole Member" is the only member of MERA, and Gomez is "the indirect beneficial owner of the Sole Member, which holds a 100% ownership interest in MERA"). This opinion proceeds with the understanding Gomez is a Third-Party Defendant. It also spells Axel Warschawski's name correctly, which the caption does not.

MERA could enter the ACDBE market, then replace MCS with its preferred ACDBE.

A. MERA and MCS Join Forces.

In or around April 2016 and October 2016, MERA's CEO and representative Gomez spoke with MCS representatives Steve Mora, Sam Mora, and Tamara Mora about MERA's plan to expand its airport concessions operation in the United States.[6] MCS already had concession agreements with multiple airports, including the Burbank Airport in California.[7] MCS alleges that Gomez represented to Steve Mora that if MCS entered into a consulting agreement with MERA, MCS would receive the first right and option to partner with MERA and its affiliates in all their future concession arrangements in the United States (the "ROFR"), and further that MERA would not compete with MCS or its affiliates.[8]

MCS agreed to enter a consulting agreement. On May 3, 2017, MCS and its subsidiary, nonparty MERA Hollywood, LLC, entered into a Joint Operations Agreement governing their relationship regarding a concession in the Burbank Airport (the "JOA").[9] The JOA states that if MCS, MERA Hollywood, or affiliates of either party "enter[] into a new Airport Contract," the other party

---

[6] TACC ¶ 21.

[7] *Id.*

[8] *Id.*

[9] *See generally* De La Torre Aff. at Ex. 1 [hereinafter "JOA"]; TACC ¶ 21.

"shall have the right to become a JV Partner with respect to such Airport Contract" subject to certain conditions.[10]

In 2021, MCS and nonparty MERA Hollywood amended and restated the JOA ("A&R JOA").[11] The A&R JOA reaffirmed that if MCS, MERA Hollywood, or affiliates of either party "enters into a new Airport Contract," the other party "shall have the first right to become a JV Partner with respect to such Airport Contract" subject to certain conditions.[12] The parties also agreed that "[e]xcept as provided . . . no provision of this Agreement shall be construed to limit any manner the Parties in carrying on their respective businesses or activities."[13]

B. The Raleigh-Durham Joint Venture

In or about August 2019, MCS invited MERA to bid on a concession opportunity solicited by the Raleigh-Durham International Airport Authority ("RDUA").[14] That invitation led to the formation of nominal defendant MERA RD LLC (the "JV").[15]

---

[10] JOA §§ 3.1–3.2.

[11] *See generally* De La Torre Aff. at Ex. 2 [hereinafter "A&R JOA"].

[12] *Id.* §§ 3.1–3.2.

[13] *Id.* § 8.8.

[14] TACC ¶ 22.

[15] *Id.*; TACC Ex. 1 [hereinafter "JV Agr."].

1. The JV Agreement

In December 2019, the JV's three members, MCS, MERA, and nonparty La Farm Bakery Bistro RD, LLC ("La Farm"), entered into a Delaware-governed LLC agreement (the "JV Agreement"),[16] as contemporaneously amended by a letter agreement (the "Letter Agreement").[17] The JV's purpose is "to finance, manage, establish[,] and operate a La Farm restaurant in the [RDUA]."[18]

The JV is a manager-managed LLC with five managers (the "Managers").[19] The JV Agreement grants MERA the right to appoint three Managers, and MCS and nonparty La Farm the right to each appoint one Manager.[20] As a result, MERA selects a majority of the Managers.[21] The MERA-appointed Managers are Rafael Aguirre De La Torre, Gomez, and Gabriel Ernesto Marques De La Torre.[22] MCS appointed Tamara Mora as its JV Manager.[23]

---

[16] *See generally* JV Agr.

[17] TACC Ex. 2 [hereinafter "Letter Agr."]; TACC ¶ 28.

[18] JV Agr. § 2.2 (registered trademark symbol omitted).

[19] *Id.* §§ 1.26, 10.1.

[20] *Id.* § 1.26.

[21] *Id.*; *see also id.* § 1.25.

[22] AB at 11; D.I. 26 Ex. 1 [hereinafter "Jan. 25 WC"] at 1–3, 5.

[23] AB at 11; Jan. 25 WC at 2.

The JV Agreement grants the Managers broad power. Managers make day-to-day business and operational decisions for the JV;[24] have the exclusive authority to initiate and defend all litigation on the JV's behalf;[25] and shall "open and maintain LLC bank accounts."[26] The JV shall pay for "all [its] expenses . . . reasonably incurred in conjunction with carrying out its business."[27]

The JV Agreement further authorizes the Managers to appoint "Members or Managers" to serve as an Officer or Operational Director of the JV.[28] The Managers may remove any Officer or Operational Director "with or without cause at any time."[29] When a Member or its representative ceases to serve as an Operational Director "for any reason," the Member becomes a "Terminated Member."[30] The JV may repurchase any Terminated Member's membership

---

[24] JV Agr. §§ 10.1, 11.1 ("Except as otherwise provided in this Agreement, Members shall take no part in the control, conduct or operation of the [JV] and shall have no right or authority to act for or bind the [JV], including during the winding up period following dissolution of the [JV]."); *id.* § 7.2 ("Except as provided by law, Members shall not be liable either severally or jointly for any expenses, obligations or liability of the [JV].").

[25] *Id.* § 10.1(a)(8).

[26] *Id.* § 10.1(a)(10).

[27] *Id.* § 7.1(b); *id*. § 7.1(a) ("The [JV] shall reimburse the Managers for the actual cost of goods and materials used for or by the [JV] in accordance with Schedule 'A.'"); *see id*. § 7.1(b)(vi) (providing six illustrative examples of reimbursable expenses).

[28] *Id.* § 10.4.1.

[29] *Id.*

[30] Letter Agr. ¶ 8; JV Agr. § 9.7.

interest at the "Interest Purchase Price."[31] Pursuant to the Letter Agreement, the Interest Purchase Price "shall be determined by the mutual agreement of a Majority of the Members on an annual basis," or, in the case of no such agreement, "by a neutral CPA . . . as appointed by mutual agreement [of] the Members."[32] If a neutral CPA is not appointed, "each Member shall appoint one CPA, and each such CPA shall vote to appoint a neutral CPA . . . such appointed CPA shall act as the neutral CPA for purposes" of determining the Interest Purchase Price.[33]

The JV Agreement explicitly delineates and assigns certain responsibilities to specific members.[34] MCS is "100%" responsible for some of the JV's tax reporting obligations and for all "administrative functions, including payroll, accounts receivable, accounts payable, [and] required reporting to RDU."[35] MERA has "100%" responsibility to "[d]efend, prosecute, compromise, settle . . . and defend any and all judicial, administrative, or other actions or claims in favor of or against the [JV] or relating to the [JV]'s business."[36]

---

[31] Letter Agr. ¶¶ 3, 8; JV Agr. §§ 1.20, 9.7.

[32] Letter Agr. ¶ 3; JV Agr. § 1.25 (defining a "Majority" as "Members collectively holding more than 50% of the Percentage Interests of all the Members").

[33] Letter Agr. ¶ 3.

[34] JV Agr. §§ 10.4.3–10.4.4; JV Agr. Ex. D; JV Agr. Ex. F (defining "[r]oles" for MERA, MCS, and La Farm).

[35] JV Agr. Ex. F.

[36] *Id.*

The JV Agreement also prohibits Managers and Officers from competing with the JV in certain situations.[37] It provides that:

> Without the consent of the Members, no Manager or Officer or Operational Director may, while such Person is a Manager or Officer or Operational Director and for a period of two years thereafter, directly or indirectly, participate in the management or operation of any airport concession within the State of North Carolina in which the [JV] has concession rights or otherwise does business, excluding any restaurants or concessions existing as of the date of this [JV] Agreement and any restaurants or concessions currently operating or to be operated in connection with that certain RDU Terminal 2 Interim Food Service Leasing Opportunity.[38]

Other than those specifically prohibited activities, Managers and their Affiliates[39] may "participate in any activities," and such participation "shall not constitute a breach of any duty that the Managers owe . . . to the [JV] or the Members."[40]

2. The Lease Agreement

In January 2021, the JV entered a Terminal Concessions Lease (the "Lease Agreement") with the RDUA.[41] Consistent with the JV Agreement, the JV agreed

[37] *Id.* § 13.11(b).

[38] *Id.*

[39] *Id.* § 1.5 (defining "Affiliates" as "to any Person, another Person who, directly or indirectly, controls, is controlled by or is under common control with, the first Person"); *id.* § 1.39 (defining "Person" as "[a] natural person, corporation, trust, partnership, joint venture, association, limited liability company or other business or other legal entity of any kind").

[40] *Id.* § 10.6(b); *see id.* § 10.7 ("The Managers and any of their Affiliates may deal directly or indirectly with the LLC in carrying out LLC business, provided that any agreement or transaction between the LLC and any Manager or any of their Affiliates is approved by a Majority vote of the Members.").

[41] TACC ¶ 36; D.I. 60 at Ex. 3 [hereinafter the "Lease Agr."].

it "will not terminate an ACDBE for convenience without the [RDUA's] prior written consent."[42] The JV further agreed that it "cannot terminate or otherwise change the terms of its ACDBE commitments without the prior written consent of the [RDUA]."[43] As required by the Lease, RDUA reviewed and later approved the JV Agreement.[44]

The RDUA required the JV establish a bank account to support its concession operations.[45] On or about February, MERA's manager Warschawski requested MCS open a bank account to support the JV.[46] MCS alleges Warschawski represented that MCS would control the JV's bank account.[47] This representation was allegedly "material" to MCS's decision to open the account and

---

[42] Lease Agr. § 21.3; JV Agr. § 4.7 (stating that "in no event shall the percentage interest held by MCS be diluted to less than 26.4% . . . , in each instance subject to the approval of RDU").

[43] Lease Agr. § 21.3.

[44] Lease Agr. § 21.5 ("The Concessionaire shall not alter or amend the approved joint venture agreement without the approval of the Authority."); TACC ¶ 40.

[45] TACC ¶¶ 23, 39–40.

[46] AB at 2.

[47] *Id.*; TACC ¶ 23. Warschawski submitted an affidavit directly challenging the allegation that he represented to MCS that they would enjoy total control of the JV's bank account. Warschawski Aff. ¶ 14 ("I never represented to Steve Mora, in February 2020, February 2021, or any other time, that, in exchange for MCS opening bank accounts on behalf of Mera RD, Mera USA would allow MCS to have exclusive control over the bank accounts."). Under Rule 12(b)(6), Warschawski's affidavit cannot be, and is not, considered as creating a disputed issue of fact. *See Windsor I, LLC v. CWCapital Asset Mgmt. LLC*, 238 A.3d 863, 873–74 (Del. 2020).

MCS's principals Steven Mora and Tamara Mora's grant of "personal guarantees" in connection with the account and Lease Agreement.[48]

C. The Relationship Between MERA and MCS Deteriorates.

Within a year of the JV Agreement, the relationship between MCS and MERA began to break down.[49] MCS claims that as early as 2021, MERA began diverting the JV's funds, goods, and personnel to its other businesses, competing with the JV through the MERA Affiliates, and separating from MCS altogether.[50]

MCS alleges MERA tried to inappropriately convert funds from the JV starting in January 2021.[51] This includes attempting to access and control the JV's bank accounts in order to support MERA's other businesses.[52] MCS also alleges Warschawski attempted to become a signatory and take control of the JV's credit card processing account in January 2024.[53] Other alleged inappropriate uses of funds include charging the JV for unrelated business expenses, including for travel

---

[48] TACC ¶¶ 23, 39, 41.

[49] *See* TACC ¶ 43.

[50] TACC ¶¶ 23, 25, 43, 45, 55, 60–66.

[51] TACC ¶¶ 25, 61–66.

[52] TACC ¶¶ 25, 42–44. The Third-Party Defendants contend MERA's representatives acted with MCS's authorization and on its instruction, offering the Court emails to that effect. Warschawski Aff. at Exs. 3–7; *see* TOB at 4.

[53] TACC ¶¶ 47–48; *see* D.I. 112 at Ex. F at 1 ("I am writing to formally request a change in the account information for our credit card processing services. Mera USA, LLC is the majority owner of Mera RD, LLC and it has come to our attention that the current account signer is our minority partner . . . . we kindly request that you update the account

and employee searches for other businesses.[54]

MCS contends that MERA also commandeered goods and personnel to use at their competing businesses.[55] Within the last three years, Counterclaim Defendants allegedly misappropriated the JV's Indeed account, "removing ads for employees needed by the La Farm Restaurant and plac[ing] ads for needed employees at their competing restaurant."[56] Other alleged actions include transferring a key JV employee to a competing business,[57] ordering JV employees to train employees of "another MERA affiliate" in excess of their permissible hours and in breach of MERA's promise not to compete with MCS,[58] and harassing and acting discriminatorily towards JV employees.[59]

MCS contends that MERA has attempted to financially "cripple" MCS.[60] MCS is currently waiting on "over $500,000" in capital improvement and startup costs, and "several hundred thousand dollars" of corporate profits allegedly due to

---

details to reflect our ownership status as the majority owner of the company and therefore [signer] in the account.").

[54] TACC ¶¶ 61, 64.

[55] *See id.* ¶¶ 62–63.

[56] *Id.* ¶ 64.

[57] *Id.* ¶ 66.

[58] *Id.* ¶ 62.

[59] *Id.* ¶ 65.

[60] *Id.* ¶ 68.

MCS.[61] And before October 2022, Counterclaim Defendants allegedly "unilaterally" decided to engage in a $650,000 La Farm patio expansion project, ballooning the price to over $850,000 by failing to obtain competitive bids, in order to prevent profit distributions to MCS.[62]

MERA has also been dissatisfied with the relationship. In 2024, MERA Hollywood sued MCS in California state court for breach of the A&R JOA, including by failing to provide certain financial reports (the "California Action").[63]

In December, MERA submitted an "ACDBE Replacement Letter" to the RDUA, seeking to terminate MCS as the JV's ACDBE partner.[64] The request was

---

[61] *Id.* ¶¶ 68–71.

[62] *Id.* ¶ 67. Here too, Third-Party Defendants tell a different story, submitting documents that tend to show the patio expansion was at least disclosed to MCS. Warschawski Aff. at Ex 8; *see* TOB at 54.

[63] TACC ¶ 42; MOB at Ex. 1; De La Torre Aff. at Ex. 3 ¶¶ 41–42. The California Action is referenced in the TACC (TACC ¶ 42), part of the public record, and appropriate for judicial notice. *See, e.g.*, *Aequitas Sols., Inc. v. Anderson*, 2012 WL 2903324, at *3 n.17 (Del. Ch. July 10, 2012) (taking judicial notice of a pleading filed in a California bankruptcy proceeding); *Baca v. Insight Enters., Inc.*, 2010 WL 2219715, at *1 (Del. Ch. June 30, 2010) (considering court filings in related derivative and federal securities actions); *Nelson v. Emerson*, 2008 WL 1961150, at *2 n.2 (Del. Ch. May 6, 2008) (taking judicial notice of "documents filed in the related federal court proceedings" on a motion to dismiss); *Orloff v. Shulman*, 2005 WL 3272355, at *12 (Del. Ch. Nov. 23, 2005) (taking judicial notice of pleadings in a related bankruptcy proceeding).

[64] TACC ¶ 46; De La Torre Aff. at Ex. 4 (attaching the JV's December 12, 2022 request). The December 12 request is integral to the Counterclaims. *Fortis Advisors LLC v. Allergan W.C. Holding Inc.*, 2019 WL 5588876, at *3 (Del. Ch. Oct. 30, 2019). MCS's TACC mentions it and relies on it to claim "RD2 fraudulently requested consent to replace MCS." TACC ¶ 59. Once again, the Third-Party Defendants offer their side of the story: they add that RDUA granted the request and authorized "MERA and MCS to

rejected.[65] The RDUA cited a lack of "evidence that MCS has not performed in a way consistent with normal industry standards," emphasizing that any termination of MCS must comply with the terms of the Lease.[66]

D. The JV Removes MCS's Manager, Operational Director, and Vice President.

On January 25, 2024, MERA as majority member, and MERA's designated Managers constituting a majority of the JV's managers, executed a written consent (the "January 25 Written Consent") removing MCS's designee Tamara Mora as Operational Director, Vice President, and MCS's appointed Manager.[67] The January 25 Written Consent also purported to repurchase MCS's membership interest.[68] It determined the Interest Purchase Price by retaining a valuation firm selected by the "Majority of the Members."[69] MCS played no role in the selection

---

separate their status as team members," but that MERA and MCS were still eligible for bidding on similar projects. De La Torre Aff. at Ex. 5; *see* TOB at 10.

[65] TACC ¶¶ 46, 60 (bolding and italics omitted).

[66] TACC ¶¶ 46, 60 (bolding and italics omitted); *see* Lease Agr. § 21.5; D.I. 112 at Ex. C at 2 ("[T]he ability to replace an ACDBE member of the Joint Venture is also governed by federal regulations. Per 49 CFR 26.53(f), the [RDUA] cannot permit the termination of an ACDBE firm operating a concession at the Airport without the [RDUA's] prior written consent. The [RDUA] may grant its consent only for documented 'good cause.'").

[67] Jan. 25 WC at 1–2; *see MERA USA, LLC v. MCS Burbank, LLC*, 2026 WL 1894905 (Del. Ch. June 15, 2026) [hereinafter "MJOP Order"] (holding the January 25 Written Consent validly accomplished those tasks).

[68] Jan. 25 WC at 2–3.

[69] *Id.*

process and did not appoint its own valuation expert.[70]

The next day the Managers agreed by written consent to seek RDUA's approval to remove MCS and its designee from the JV.[71] The written consents were executed by Gomez and nonparties Rafael Aguirre De La Torre and Gabriel Ernesto Marques De La Torre.[72]

After receiving notice of the JV's request to seek its removal, MCS objected to the RDUA, to no avail.[73] On April 2, the RDUA approved the JV's request to remove MCS.[74] The RDUA "determined that MERA ha[d] provided documentation sufficient to demonstrate 'good cause'" and that the removal request complied with 49 CFR Parts 23 and 26.[75] MCS again objected, claiming the RDUA's good cause finding was unlawful.[76]

E. Litigation Ensues.

On February 29, 2024, MERA initiated this action with a focus on MCS's removal.[77] MCS filed counterclaims claiming the parties' entire relationship was

---

[70] *Id.*; *see* Letter Agr. ¶ 3.

[71] D.I. 26 at Ex. 2 [hereinafter "Jan. 26 WC"].

[72] Jan. 25 WC at 5; Jan. 26 WC at 3.

[73] TACC ¶¶ 49, 53.

[74] TACC ¶ 52; D.I. 68, Ex. 4 at 5.

[75] *Id.*

[76] TACC ¶ 53.

[77] D.I. 1.

a fraudulent scheme.[78] For months, the parties circled around each other at the pleading stage, moving to dismiss each other's claims and amending their own.[79] The fight spilled into the FAA and other courts.[80]

This action was stayed on MCS's representation that RDUA's approval of its removal was being appealed before the FAA.[81] The stay was lifted on October 9, 2025.[82] On May 28, 2026, MCS submitted a letter from the FAA stating the FAA would defer jurisdiction to this Court, and MCS could refile with the FAA after termination of this proceeding if it did not result in a merits decision or settlement.[83]

On June 15, I entered an order granting MERA's motion for a partial judgment on the pleadings, confirming the January 25 Written Consent had validly removed MCS's representative as Operational Director, Vice President, and Manager (the "MJOP Order").[84] The MJOP Order also found the purported repurchase of MCS's membership interest violated the JV Agreement, as amended by the Letter Agreement, because "MCS has the right to have a neutral CPA

---

[78] *See generally* D.I. 14.

[79] *See, e.g.*, D.I. 12; D.I. 23; D.I. 25; D.I. 30; D.I. 37; D.I. 44; D.I. 48; D.I. 59; TACC; D.I. 65; D.I. 66.

[80] MJOP Order, 2026 WL 1894905, at *1–3, *2 n.32.

[81] D.I. 88.

[82] D.I. 99.

[83] D.I. 123 at Ex. A.

determine the Interest Purchase Price."[85]

MCS's Third Amended and Supplemental Counterclaims ("TACC") are now before the Court. MCS presses nine claims against MERA, Gomez, Warschawski, and the MERA Affiliates.[86] Count I asserts MERA representatives fraudulently induced MCS to partner with MERA by (i) misrepresenting to MCS that it would control the JV's bank account; (ii) claiming MERA would not compete against MCS; and (iii) misrepresenting MCS's ROFR to partner with MERA on future concession ventures.[87] Count II alleges the Counterclaim Defendants engaged in unfair business practices in violation of 6 *Del. C.* § 2513; MCS withdrew that claim.[88] Count III alleges the Counterclaim Defendants breached the JV Agreement by (i) improperly removing MCS in violation of Sections 10.2.2, 9.9, and 4.7; (ii) failing to reimburse MCS in violation of Section 7.1(b); and (iii) competing against MCS in contravention of Section 13.11.[89] Count IV alleges the Counterclaim Defendants breached the implied covenant of

---

[84] D.I. 125; *see generally* MJOP Order, 2026 WL 1894905.

[85] MJOP Order, 2026 WL 1894905, at *8; Letter Agr. ¶ 3.

[86] *See generally* TACC.

[87] *Id.* ¶¶ 74–79; AB at 16–19.

[88] TACC ¶¶ 80–85; AB at 6 n.1 ("MCS does not oppose dismissal of Count II of its Counterclaims and has reached out to Counterclaim Defendants' counsel to advise and coordinate dismissal accordingly.").

[89] TACC ¶¶ 86–104.

good faith and fair dealing.[90] Count V alleges Gomez and Warschawski breached fiduciary duties owed to the JV by: (i) usurping business opportunities belonging to the JV; (ii) misappropriating the JV's resources; (iii) inappropriately removing MCS's representative from all of her JV positions; and (iv) seeking to repurchase MCS's JV membership interest.[91] Counts VI and VII assert claims for promissory and equitable estoppel against the Counterclaim Defendants.[92] Count VIII seeks a declaration of MCS's rights under the JV Agreement and an order compelling the Counterclaim Defendants to account for funds purportedly misappropriated from the JV.[93] Count IX alleges the Counterclaim Defendants committed conversion.[94] MCS brings Counts V and IX derivatively, on behalf of the JV.[95]

The Counterclaim Defendants divided into two factions and filed two motions to dismiss. The Third-Party Defendants moved to dismiss under Court of Chancery Rules 12(b)(2) and 12(b)(6) ("Third-Party Defendants' Motion").[96] MERA moved to dismiss Counterclaim Counts I, II, IV, VI, VII, and IX for failure to plead demand futility and failure to state a claim ("MERA's Motion," and with

---

[90] *Id.* ¶¶ 105–13.

[91] *Id.* ¶¶ 114–20.

[92] *Id.* ¶¶ 121–32.

[93] *Id.* ¶¶ 134–38.

[94] *Id.* ¶¶ 139–43.

[95] Hr'g Tr. 43–45; *see* TACC ¶¶ 3, 120, 143; AB at 50–51.

[96] D.I. 65.

Third-Party Defendants' Motion, the "Motions").[97]

II. ANALYSIS

After a journey through personal jurisdiction, demand futility, and the merits, all of MCS's counterclaims are dismissed except its claims against MERA for breach of the JV Agreement (Count III), and a declaratory judgment to that effect and an accounting (Count VIII).

A. Personal Jurisdiction

The Third-Party Defendants moved to dismiss MCS's counterclaims for lack of personal jurisdiction under Rule 12(b)(2). The Court has personal jurisdiction over all Third-Party Defendants except Warschawski. It will exercise personal jurisdiction over Gomez only insofar as the claims relate to his duties as JV Manager.

When personal jurisdiction is challenged under Rule 12(b)(2), "the plaintiff bears the burden of showing a basis for the court's exercise of jurisdiction over the defendant[s]."[98] The court may consider the pleadings, affidavits, and any

---

[97] D.I. 66; *see* MOB at 3–8; D.I. 115 at 5 ("MERA USA did not move to dismiss MCS's contract claim (Count III)").

[98] *Gifford*, 935 A.2d at 265; *Werner v. Miller Tech. Mgmt., L.P.*, 831 A.2d 318, 326 (Del. Ch. 2003); *Newspan, Inc. v. Hearthstone Funding Corp.*, 1994 WL 198721, at *3 (Del. Ch. May 10, 1994) ("Although a plaintiff is not required to plead personal jurisdiction, once a defendant has moved to dismiss the complaint for lack of personal jurisdiction the plaintiff bears the burden of showing that the court has personal jurisdiction over the defendant.").

discovery of record.[99] "All allegations of fact concerning personal jurisdiction are presumed true, unless contradicted by affidavit."[100] Where a defendant challenges the plaintiff's allegations of personal jurisdiction, "the plaintiff may not rely solely on its complaint, but must support those assertions with affirmative proof."[101] "If, as here, no evidentiary hearing has been held, plaintiffs need only make a *prima facie* showing of personal jurisdiction[,] and 'the record is construed in the light most favorable to the plaintiff.'"[102]

1. The MERA Affiliates

Because the MERA Affiliates are Delaware limited liability companies, this Court has general jurisdiction over them.[103]

General jurisdiction exists where a company's "continuous corporate operations within a state [are] so substantial and of such a nature as to justify suit against it on causes of action arising from dealings entirely distinct from those

---

[99] *Gifford*, 935 A.2d at 265; *Cornerstone Techs., LLC v. Conrad*, 2003 WL 1787959, at *3 (Del. Ch. Mar. 31, 2003).

[100] *Crescent/Mach I P'rs., L.P. v. Turner*, 846 A.2d 963, 974 (Del. Ch. 2000).

[101] *Newspan*, 1994 WL 198721, at *3 (Del. Ch. May 10, 1994); *see also Optimalcare, Inc. v. Hightower*, 1996 WL 417510, at *3 (Del. Ch. July 17, 1996) (denying a Rule 12(b)(2) motion to dismiss for lack of personal jurisdiction relying solely on facts as alleged in plaintiff's complaint).

[102] *Gifford*, 935 A.2d at 265.

[103] TACC ¶¶ 5–7.

activities."[104] General jurisdiction exists where a defendant is "essentially at home" in the forum state.[105] An entity is "at home" where it is formed.[106] "[T]he 'paradigm' fora for general jurisdiction over a corporation are its place of incorporation and its principal place of business because those affiliations are 'unique' and 'easily ascertainable.'"[107]

The MERA Affiliates' only argument against personal jurisdiction invokes

---

[104] *Genuine Parts Co. v. Cepec*, 137 A.3d 123, 129 (Del. 2016) (quoting *Int'l Shoe Co. v. State of Wash., Office of Unemployment Comp. & Placement*, 326 U.S. 310, 318 (1945)).

[105] *Goodyear Dunlop Tires Operations, S.A. v. Brown*, 564 U.S. 915, 919 (2011); *see In re Talc Prod. Liab. Litig.*, 2018 WL 4340012, at *3 (Del. Super. Sept. 10, 2018) (noting "a corporation is certainly 'at home' in its place of incorporation or its principal place of business").

[106] *Genuine Parts*, 137 A.3d at 127 ("Businesses select their states of incorporation and principal places of business with care, because they know that those jurisdictions are in fact 'home' and places where they can be sued generally."); *Slingshot Techs., LLC v. Acacia Rsch. Corp.*, 2021 WL 979539, at *3 (Del. Ch. Mar. 15, 2021) (noting a Delaware limited liability company "is already subject to general jurisdiction in Delaware" as "[g]eneral jurisdiction will exist in Delaware when the entity is incorporated here or has its principal place of business here; otherwise, general jurisdiction generally will not exist over a foreign entity"); *Wolf Invs. Fund, LLC v. Cap. Source 2000, Inc.*, 2025 WL 429900, at *3 (Del. Super. Ct. Feb. 3, 2025) ("The Court finds that it has general jurisdiction over Capital Source, 2000 [I]nc., and CS2K, LLC. . . . . Here, Capital Source 2000, Inc. and CS2K, LLC are both Delaware entities. Capital Source 2000, Inc. is incorporated in the State of Delaware and CS2K, LLCs registered in Delaware. Thus, because both entities are 'at home' in Delaware the Court can exercise general jurisdiction over the entities." (internal citation omitted)).

[107] *Genuine Parts*, 137 A.3d at 129 (quoting *Daimler AG v. Bauman*, 571 U.S. 117, 137 (2014)); *In re Talc Prod. Liab. Litig.*, 2018 WL 4340012, at *5; *iBio, Inc. v. Fraunhofer-Gesellschaft zur Förderung der Angewandten Forschung E.V.*, 2018 WL 6493503, at *2 (Del. Ch. Dec. 10, 2018) ("Courts may exercise general or specific jurisdiction over a defendant. State courts exercise general jurisdiction over a defendant corporation when the corporation is incorporated in or has its principal place of business in that state." (citing *Daimler AG*, 571 U.S. at 137)).

the concept of minimum contacts.[108] But the *Daimler* standard does not require "continuous and systematic contacts" when an entity is incorporated or has a principal place of business in the forum.[109] The MERA Affiliates are incorporated in Delaware, so that is the end of the inquiry.[110]

The Third-Party Defendants' Motion under Rule 12(b)(2) is denied as to the MERA Affiliates.

2. Gomez and Warschawski

MCS contends this Court may exercise personal jurisdiction over Gomez and Warschawski as managers of the JV under 6 *Del. C.* § 18-109(a).[111] For nonresident defendants, Delaware courts resolve questions of personal jurisdiction using a two-step analysis.[112] First, the Court must "determine that service of

---

[108] Hr'g Tr. 19; *see* TOB at 15–16, 24–26; TRB at 11–14.

[109] *See Altabef v. Neugarten*, 2021 WL 5919459, at *4 (Del. Ch. Dec. 15, 2021) ("In *Daimler AG v. Bauman*, the United States Supreme Court explained that courts can only exercise general jurisdiction over an entity defendant if the entity has one of a 'limited set of affiliations with [the] forum [to] render [the] defendant amenable to all-purpose jurisdiction.' Three forms of affiliation subject an entity defendant to general jurisdiction: (i) it is incorporated in the forum; (ii) it has its principal place of business in the forum; or (iii) its forum contacts 'are so continuous and systematic as to render [it] essentially at home' there.").

[110] *See, e.g.*, *Genuine Parts*, 137 A.3d at 127; *iBio*, 2018 WL 6493503, at *2 ("When a party is not subject to general jurisdiction, Delaware courts apply a two-step analysis to determine whether the exercise of specific personal jurisdiction over a nonresident is appropriate.").

[111] AB at 49.

[112] *Gifford*, 935 A.2d at 2; *Matthew v. Fläkt Woods Grp. SA*, 56 A.3d 1023, 1027 (Del. 2012).

process is authorized by statute."[113] Second, the defendant must have certain minimum contacts with Delaware such that the exercise of personal jurisdiction does not offend "traditional notions of fair play and substantial justice."[114]

"The Delaware Limited Liability Company Act (the 'LLC Act') authorizes service of process on the managers of limited liability companies formed under the laws of this State."[115] For the statute to apply, the defendant must be a manager.[116] Section 18-109 defines "manager" to include both formal managers as designated in the company's governing documents and acting managers.[117]

As for Gomez, MCS alleges he is a Manager of the JV, and he does not contend otherwise.[118] So personal jurisdiction hinges on whether Gomez statutorily consented to specific jurisdiction for MCS's claims, and whether personal jurisdiction satisfies due process.[119]

---

[113] *Gifford*, 935 A.2d at 265; *Fläkt Woods*, 56 A.3d at 1027; *iBio*, 2018 WL 6493503, at *2 ("When a party is not subject to general jurisdiction, Delaware courts apply a two-step analysis to determine whether the exercise of specific personal jurisdiction over a nonresident is appropriate.").

[114] *Fläkt Woods*, 56 A.3d at 1027 (quoting *Int'l Shoe*, 326 U.S. at 316); *Gifford*, 935 A.2d at 265.

[115] *In re Mobilactive Media, LLC*, 2013 WL 297950, at *29 (Del. Ch. Jan. 25, 2013).

[116] *Lone Pine Res., LP v. Dickey*, 2021 WL 2311954, at *7 (Del. Ch. June 7, 2021).

[117] *Metro Storage Int'l LLC v. Harron*, 2019 WL 3282613, at *5–6 (Del. Ch. July 19, 2019); *see* 6 *Del. C.* §§ 18-101(12), 18-109(a).

[118] TACC ¶ 8; *see also* Jan. 25 WC (executing written consent as Manager); Jan. 26 WC (same).

[119] *In re P3 Health Grp. Hldgs., LLC*, 282 A.3d 1054, 1064 (Del. Ch. 2022) ("Section 18-109(a) only provides a basis for specific jurisdiction, not general jurisdiction."); *see*

Under Section 18-109(a), a Court can exercise personal jurisdiction when the claim "involv[es] or relat[es] to the business of the limited liability company or a violation by the manager . . . of a duty to the limited liability company or any member of the limited liability company at the time suit is commenced."[120] A manager of a Delaware limited liability company "impliedly consent[s] to being sued in a Delaware court to adjudicate disputes so inherently intertwined with that fiduciary position."[121]

MCS's claim that Gomez violated his duty to the JV as Manager plainly satisfies this standard.[122] MCS alleges Gomez usurped certain opportunities belonging to the JV;[123] improperly competed with the JV;[124] misappropriated the JV's resources;[125] and signed the Written Consents in contravention of the JV Agreement.[126] Those allegations directly implicate Gomez's duties as a Manager

---

Cornerstone, 2003 WL 1787959, at *8; *Total Hldgs. USA, Inc. v. Curran Composites, Inc.*, 999 A.2d 873, 885 n.39 (Del. Ch. 2009) (noting Section "18-109 of the LLC statute [] provides a basis for specific, not general, personal jurisdiction over defendants regarding certain types of disputes").

[120] 6 *Del. C.* § 18-109(a).

[121] *P3 Health*, 282 A.3d at 1072 (internal quotation and citation omitted).

[122] AB at 50–51.

[123] *Id.* at 17 (citing TACC ¶ 60); *id*. at 51 (citing TACC ¶ 115).

[124] *Id.* at 17 (citing TACC ¶ 42).

[125] *Id.* at 17–19 (citing TACC ¶¶ 61–64, 66); *id*. at 51 (citing TACC ¶ 115).

[126] AB at 51 (TACC ¶¶ 74–79, 86–104); TACC ¶ 110. The MJOP Order held the attempted repurchase was inconsistent with the JV Agreement as amended. MJOP Order, 2026 WL 1894905, at *8.

and concern acts, namely executing the Written Consents, that the JV Agreement exclusively vested with Managers.

The Court also has personal jurisdiction over Gomez for MCS's other claims that are sufficiently related to the fiduciary duty claim. "[O]nce jurisdiction is properly obtained over a non-resident [manager] …, such non-resident [manager] is properly before the Court for any claims that are sufficiently related to the cause of action asserted against [a] [manager] in [her] capacity as [manager]."[127] "Sufficiently related claims are those predicated on the same set of facts."[128] MCS's contractual claim, like its fiduciary duty claim, alleges Gomez improperly authorized the JV to repurchase MCS's membership interest and usurped opportunities belonging to the JV.[129] So do the implied covenant claim and declaratory judgment claim.[130] MCS's claim for conversion alleges Gomez disloyally misappropriated the JV's "assets and property" for MERA's benefit and

[127] *Infinity Inv'rs Ltd. v. Takefman*, 2000 WL 130622, at *6 (Del. Ch. Jan. 28, 2000) (interpreting Delaware's director consent statute, 10 *Del. C.* § 3114, in the context of a Section 225 proceeding); *see Metro Storage*, 2019 WL 3282613, at *27 ("Once a defendant is subject to personal jurisdiction under 6 *Del. C.* § 18-109(a) as to certain claims, the Court may exercise personal jurisdiction over the defendant with respect to any claims that are sufficiently related to the cause of action." (quoting *Yu v. GSM Nation, LLC*, 2018 WL 2272708, at *11 (Del. Super. Apr. 24, 2018))).

[128] *Metro Storage*, 2019 WL 3282613, at *27 (quoting *GSM Nation*, 2018 WL 2272708, at *11).

[129] TACC ¶¶ 90, 97, 98, 100, 102–03.

[130] *See id.* ¶ 110.

to the JV's detriment.[131] Those claims are sufficiently related to the breach of fiduciary duty claim to support personal jurisdiction.[132]

MCS's fraud and estoppel claims are distinct. They are based on representations Gomez purportedly made in 2016, three years before the JV was formed and Gomez became its manager.[133] Those claims have no relationship to any duties he owed the JV as Manager, and do not "'involve or relate'" to the JV's business or concern "a corporate governance or internal affairs claim that would ordinarily fall within the scope of 18-109."[134] Nor are such statements based on

---

[131] AB at 18 (citing TACC ¶ 63).

[132] *See Feeley v. NHAOCG, LLC*, 2012 WL 966944, at *7 (Del. Ch. Mar. 20, 2012) (finding that the scope of Section 18-109 "encompass[es] an alleged violation by a manager of the express and implied contractual duties owed by the manager under the operative limited liability company agreement"); *Metro Storage*, 2019 WL 3282613, at *28 (finding the Court's exercise of personal jurisdiction under 18-109(a) comported with due process where the declaratory judgment claim "is closely related" to the plaintiff's breach of contract and breach of fiduciary duty claims); *Fitzgerald v. Chandler*, 1999 WL 1022065, at *4–5 (Del. Ch. Oct. 14, 1999); *see P3 Health*, 282 A.3d at 1072 ("[W]hen the action relates to a violation by the manager of a fiduciary duty owed to the LLC and its members, then the exercise of jurisdiction under Section 18-109 complies with due process."); *CelestialRX Invs., LLC v. Krivulka*, 2019 WL 1396764, at *20 (Del. Ch. Mar. 27, 2019) (finding where "[p]laintiffs' claims against [defendant] . . . deal with his duties and obligations as a director and manager . . . . [defendant's] due process rights are not offended by this Court's assertion of jurisdiction over him"); *CLP Toxicology, Inc. v. Casla Bio Hldgs. LLC*, 2020 WL 3564622, at *12 (Del. Ch. June 29, 2020).

[133] TACC ¶¶ 21, 74–79, 121–32.

[134] *Endowment Rsch. Grp., LLC v. Wildcat Venture P'rs, LLC*, 2021 WL 841049, at *5 (Del. Ch. Mar. 5, 2021) (quoting *Vichi v. Koninklijke Philips Elecs. N.V.*, 2009 WL 4345724, at *8 (Del. Ch. Dec. 1, 2009)); *P3 Health*, 282 A.3d at 1072 ("Asserting jurisdiction over a senior corporate officer based on an implied consent statute 'readily

the same facts as MCS's other claims.[135] The Court is unable to exercise personal jurisdiction over Gomez as to Counts I, VI, and VII.[136]

For the fiduciary duty claims and related claims, exercising personal jurisdiction over Gomez under Section 18-109 is consistent with due process.[137] Due process requires "the nonresident defendant's contacts with the forum [to] rise to such a level that it should 'reasonably anticipate' being required to defend itself in Delaware's courts."[138] Service comports with due process where (1) "the allegations focused on the defendant's rights, duties, and obligations as the manager of a limited liability company; (2) the matter was 'inextricably bound up in Delaware law'; and (3) Delaware has a strong interest in providing a forum for

---

satisfies due process' for purposes of claims that relate to the defendant's role as an officer.").

[135] *Vichi*, 2009 WL 434572, at *8 (finding personal jurisdiction unavailable under Section 18-109(a) where the claim "does not involve or relate to the business of [the LLC]" or implicate the "obligations a manager owes to his organization."); *see Baier v. Upper New York Inv. Co. LLC*, 2018 WL 1791996, at *9 (Del. Ch. Apr. 16, 2018) ("It is inconceivable how [defendant's] alleged wrongdoing, which occurred prior to the formation of the LLC Defendants, arose out of his rights, duties and obligations as manager of limited liability companies that were not yet in existence when the wrongdoing occurred.").

[136] *Vichi*, 2009 WL 4345724, at *8 (finding no supplemental jurisdiction because "[n]one of these counts relate to the rights, duties and responsibilities Ho owes *to Finance*, or in any other way to the internal business affairs of Finance or to the running of Finance's day-to-day operations").

[137] *See PT China LLC v. PT Korea LLC*, 2010 WL 761145, at *4–5 (Del. Ch. Feb. 26, 2010).

[138] *AeroGlobal Cap. Mgmt., LLC v. Cirrus Indus., Inc.*, 871 A.2d 428, 440 (Del. 2005) (citing *World–Wide Volkswagen Corp. v. Woodson*, 444 U.S. 286, 297 (1980)).

disputes relating to the actions of managers of a limited liability company formed under its law in discharging their managerial functions."[139] The allegations that Gomez breached his fiduciary duties as the JV's Manager satisfy all three.[140]

MCS has established a prima facie case of personal jurisdiction over Gomez as to Counts III, IV, V, VIII, and IX. But Counts I, VI, and VII are dismissed as against Gomez.

As for Warschawski, he submitted an affidavit swearing he was not a formal Manager of the JV, and MCS concedes as much.[141] MCS presses two theories to secure jurisdiction over Warschawski. Neither succeeds.

First, MCS contends Warschawski was an acting manager of the JV because as a manager of MERA he oversaw the finances of its subsidiaries, including those of the JV.[142] An acting manager is not formally designated but "participates materially in the management of the limited liability company."[143] Material

---

[139] *PT China*, 2010 WL 761145, at *5 (quoting *Assist Stock Mgmt. L.L.C. v. Rosheim*, 753 A.2d 974, 981 (Del. Ch. 2000)).

[140] *See VTB Bank v. Navitron Projects Corp.*, 2014 WL 1691250, at *4 (Del. Ch. Apr. 28, 2014) (reasoning the due process inquiry is satisfied where the claims at issue "relate to the 'rights, duties and responsibilities' that the manager owes to the company or to the manager's involvement in the company's 'internal business affairs' or 'day-to-day operations'" (quoting *Vichi*, 2009 WL 4345724, at *8)).

[141] Warschawski Aff. ¶ 12 ("I am not a manager, officer, or director of [the JV]."); AB at 50 (citing Warschawski Aff. ¶ 8 and D.I. 64).

[142] AB at 50 (quoting Warschawski Aff. ¶ 8).

[143] 6 *Del. C.* § 18-109(a)(ii).

participation amounts to playing a meaningful part in management.[144] The Court has found a defendant participates materially in an LLC's management when the defendant served as an officer of the LLC and ran its day-to-day operations,[145] or performed actions within the exclusive remit of a manager.[146] "The management of the underlying assets of an LLC is analytically distinct from the management of the LLC itself for the purposes of Section 18-109(a)(ii)."[147]

MCS argues Warschawski played a meaningful role in the JV's management due to his responsibilities as MERA's manager, which included "overseeing corporate, finance, and accounting functions and related roles for [MERA] and its subsidiaries, including [the JV]."[148] That constitutes managing the LLC's

---

[144] *Dlayal Hldgs., Inc., v. Marwan Al-Bawardi*, 2021 WL 6121724, at *5 (Del. Ch. Dec. 27, 2021); *P3 Health*, 282 A.3d at 1065 ("The plain language of Section 18-109(a)(ii) [] confers the status of an acting manager on an individual who has a significant role in managing an LLC or who plays a significant part in an activity or event that constitutes part of the management of the LLC.").

[145] *Phillips v. Hove*, 2011 WL 4404034, at *22, *24 (Del. Ch. Sept. 22, 2011); *Metro Storage*, 2019 WL 3282613, at *11; *see Lynch v. Gonzalez*, 2020 WL 4381604, at *40 (Del. Ch. July 31, 2020) (finding after trial the defendant was an informal manager because the defendant "formally served as [the limited liability company's] President, controlled [its] management and business, and made the ultimate decisions for the [limited liability company]").

[146] *Mobilactive Media*, 2013 WL 297950, at *30.

[147] *Fla. R & D Fund Invs., LLC v. Fla. BOCA/Deerfield R & D Invs., LLC*, 2013 WL 4734834, at *8 (Del. Ch. Aug. 30, 2013); *see also Vichi*, 2009 WL 4345724, at *7 (finding a defendant whose participation was only as a representative of the limited liability company's parent did not participate materially in the management of the limited liability company).

[148] AB at 50 (quoting Warschawski Aff. ¶ 8) (bolding and italics omitted).

underlying assets, not its operations: that is not enough.[149] MCS argues that Warschawski's role is analogous to that of the defendant in *Phillips v. Hove*, where the Court found the defendant to be an acting manager.[150] Hove was the limited liability company's president, and admitted he "'took over . . . in all respects' day-to-day operations" of the company, including filing for bankruptcy.[151] Warschawski played no role in the JV's management or operations, was not an officer, and took no actions that a JV manager would take. At most, he oversaw JV's finances as a manager of its parent. That falls far short of managing the JV. MCS offers no basis to conclude Warschawski acted as a manager of the JV or consented to personal jurisdiction under Section 18-109.

Second, MCS argues that Warschawski's actions in furtherance of Counterclaim Defendant's broader scheme supports personal jurisdiction. MCS contends TACC Paragraph 21 alleged Warschawski "founded the Joint Venture, a Delaware LLC."[152] But the TACC did not allege that, in Paragraph 21 or

---

[149] *Fla. R & D Fund Invs.*, 2013 WL 4734834, at *8 ("Merely having the capacity to participate in management does not constitute material participation in management.").

[150] *See generally Phillips v. Hove*, 2011 WL 4404034 (Del. Ch. Sept. 22, 2011); AB at 49.

[151] *Hove*, 2011 WL 4404034, at *22.

[152] AB at 51 (citing TACC ¶ 21 and *Vichi*, 2009 WL 4345724, at *8 ("A single act of incorporation in Delaware, if done as part of a wrongful scheme, will suffice to confer personal jurisdiction over the nonresident defendants responsible for the scheme.")).

MCS abandoned its conspiracy and alter ego theories of jurisdiction. AB at 51–52.

anywhere else.[153] That unpled assertion cannot support personal jurisdiction.[154]

B. MCS Lacks Derivative Standing.

MCS brought Count V for breach of fiduciary duty by the Gomez and Warschawski, and Count IX for conversion by all Counterclaim Defendants, derivatively on behalf of the JV. MERA moved to dismiss MCS's derivative claims for failure to plead demand futility with sufficient particularity, and for failure to state a claim.[155] The claims fail at the threshold issue of derivative standing.

Litigation in the context of corporations' director-centric governance model is built on the premise that an equityholder can bring a derivative suit when and only when directors refuse or are unable to impartially consider that suit.[156] That

---

[153] TACC ¶ 21; *see generally* TACC.

[154] *Sprint Nextel Corp. v. iPCS, Inc.*, 2008 WL 2737409, at *5 (Del. Ch. July 14, 2008) ("On a motion to dismiss under Rule 12(b)(2), the plaintiff has the burden to show a basis for the Court's jurisdiction over the nonresident defendant."); *Bocock v. INNOVATE Corp.*, 2022 WL 15800273, at *8 (Del. Ch. Oct. 28, 2022) (dismissing defendant under Rule 12(b)(2) where defendant "is not alleged to have conducted business in or otherwise have a connection with this forum"); *Stimwave Techs. Inc. v. Perryman*, 2020 WL 6735700, at *5 (Del. Ch. Nov. 17, 2020) ("While a valid path to jurisdiction, the conspiracy theory of personal jurisdiction is very narrowly construed to prevent plaintiffs from circumvent[ing] the minimum contacts requirement. Therefore, application of personal jurisdiction under the conspiracy theory requires factual proof of each enumerated element." (alterations, footnotes, and internal quotation marks omitted)).

[155] D.I. 66; TOB at 3 (incorporating by reference MERA's Rule 12(b)(6) arguments in its Opening Brief).

[156] *United Food & Com. Workers Union & Participating Food Indus. Emps. Tri-State Pension Fund v. Zuckerberg* (*"Zuckerberg II"*), 262 A.3d 1034, 1047 (Del. 2021) ("In a derivative suit, a stockholder seeks to displace the board's [decision-making] authority

premise, that directors control corporate assets unless there is a good reason why they should not, mandates that a plaintiff plead demand futility with particularity.[157]

Those concepts are also foundational in the LLC context. Managerial control over derivative suits, and a high standard for handing that control to a nonmanaging member, are both memorialized in the Limited Liability Company Act.[158] Section 18-1001 provides that members of an LLC may bring a derivative suit if the LLC's managers "have refused to bring the action or if an effort to cause

---

over a litigation asset and assert the corporation's claim.' Thus, '[b]y its very nature[,] the derivative action' encroaches 'on the managerial freedom of directors' by seeking to deprive the board of control over a corporation's litigation asset." (alterations in original and internal citations omitted)); *Lenois v. Lawal*, 2017 WL 5289611, at *9 (Del. Ch. Nov. 7, 2017) ("In order for a stockholder to divest the directors of their authority to control the litigation asset and bring a derivative action on behalf of the corporation, the stockholder must allege with particularity either that (1) she has made a demand on the company or (2) her demand would be futile.").

[157] *In re Kraft Heinz Co. Deriv. Litig.*, 2021 WL 6012632, at *4 (Del. Ch. Dec. 15, 2021) (explaining the demand futility standard "is rooted in the 'basic principle of the Delaware General Corporation Law … that the directors, and not the stockholders, manage the business and affairs of the corporation.'" (quoting *FLI Deep Marine LLC v. McKim*, 2009 WL 1204363, at *2 (Del. Ch. Apr. 21, 2009), *aff'd*, 282 A.3d 1054 (Del. 2022))); *Lewis v. Aronson*, 466 A.2d 375, 380 (Del. Ch. 1983) (The rule "is designed to give a corporation, on whose behalf a derivative suit is brought, the opportunity to rectify the alleged wrong without suit and to control any litigation brought for its benefit"), *rev'd on other grounds*, 473 A.2d 805 (Del. 1984).

[158] *See VGS, Inc. v. Castiel*, 2003 WL 723285, at *11 (Del. Ch. Feb. 28, 2003) ("[C]ase law governing corporate derivative suits is equally applicable to suits on behalf of an LLC."); *Kelly v. Blum*, 2010 WL 629850, at *9 (Del. Ch. Feb. 24, 2010) ("Sections 18-1001 to 18-1004 of the Delaware Limited Liability Company Act [] were modeled, in significant part, on the corporate derivative suit.").

those managers or members to bring the action is not likely to succeed."[159] And Section 18-1003 provides that "[i]n a derivative action, the complaint shall set forth with particularity the effort, if any, of the plaintiff to secure initiation of the action by a manager or member or the reasons for not making the effort."[160]

But LLCs are different than corporations: they are creatures of contract.[161] Their creators can write their own rules.[162] Where the LLC agreement covers an issue, "the agreement controls unless it violates one of the Act's mandatory provisions."[163] "'[B]ecause the policy of the [LLC] Act is to give the maximum effect to the principle of freedom of contract and to the enforceability of LLC agreements, the parties may contract to avoid the applicability of Section [18-

---

[159] 6 *Del. C.* § 18-1001.

[160] 6 *Del. C.* § 18-1003.

[161] *Kuroda v. SPJS Hldgs., L.L.C.*, 971 A.2d 872, 880 (Del. Ch. 2009) ("Limited liability companies are creatures of contract, and the parties have broad discretion to use an LLC agreement to define the character of the company and the rights and obligations of its members."); *see Dieckman v. Regency GP LP*, 155 A.3d 358, 366 (Del. 2017) ("Investors must appreciate that 'with the benefits of investing in alternative entities often comes the limitation of looking to the contract as the exclusive source of protective rights.'" (quoting *The Haynes Fam. Tr. v. Kinder Morgan G.P., Inc.*, 2016 WL 912184, at *2 (Del. Mar. 10, 2016) (TABLE))).

[162] *Salzberg v. Sciabacucchi*, 227 A.3d 102, 116 (Del. 2020) ("At its core, the [the Act, like the DGCL] is a broad enabling act which leaves latitude for substantial private ordering, provided the statutory parameters and judicially imposed principles of fiduciary duty are honored." (quoting *Williams v. Geier*, 671 A.2d 1368, 1381 (Del. 1996))); *see* 6 *Del. C.* § 18-1101(b) ("It is the policy of this chapter to give the maximum effect to the principle of freedom of contract and to the enforceability of limited liability company agreements.").

[163] *In re Coinmint, LLC*, 261 A.3d 867, 900 (Del. Ch. 2021).

1001],' which grants members the right to bring derivative actions."[164]

Section 10.1(a)(8) of the JV Agreement does just that. It states "the Managers shall have the right and obligation to . . . manage the initiation and defense of litigation" on the JV's behalf.[165] Section 11.1 goes on: "Except as otherwise provided in this Agreement, Members shall take no part in the control, conduct or operation of the LLC and shall have no right or authority to act for or bind the LLC . . . ."[166] And Exhibit F provides that MERA has "100%" responsibility to prosecute claims in favor of the LLC.[167]

Pursuing derivative litigation falls within Section 10.1(a)(8).[168] MCS, as a JV Member,[169] is seeking to exercise the right to manage derivative litigation. But the JV Agreement specifies those rights belong exclusively to Managers, with Exhibit F providing some wiggle room to argue MERA has litigation rights as well.[170] MCS as a Member cannot exercise a right the JV Agreement vests

---

[164] *Lehr v. Aspen Power P'rs LLC*, 2026 WL 865854, at *7 (Del. Ch. Mar. 30, 2026) (quoting *Elf Atochem N. Am., Inc. v. Jaffari*, 727 A.2d 286, 295 (Del. 1999)).

[165] JV Agr. § 10.1(a)(8).

[166] *Id.* § 11.1.

[167] JV Agr. Ex. F at 41.

[168] *See Lehr*, 2026 WL 865854, at *7–8 (holding that certain Class A members cannot exercise their rights through a derivative suit because the LLC agreement requires unanimous consent of all members to do so).

[169] For purposes of this analysis, I overlook the potentially complicating factor that MCS is a Terminated Member. MJOP Order, 2026 WL 1894905, at *7.

specifically with the Managers.

MCS's derivative claims fail for lack of standing. The Motions are granted as to Counts V and IX.

C. The Merits

That leaves MCS's direct claims against MERA, the MERA Affiliates, and Gomez to the extent the Court has personal jurisdiction over him: Count I for fraudulent inducement against MERA and MERA Affiliates; Count III for breach of the JV Agreement against MERA, the MERA Affiliates, and Gomez; Count IV for breach of its implied covenant of good faith and fair dealing against MERA, the MERA Affiliates, and Gomez; Counts VI and VII for promissory and equitable estoppel against MERA and the MERA Affiliates; and Count VIII for a declaratory judgment and accounting against MERA, the MERA Affiliates, and Gomez. Only Counts III and VIII against MERA state a claim under Court of Chancery Rule 12(b)(6).

The standards for a motion to dismiss are well settled:

> (i) [A]ll well-pleaded factual allegations are accepted as true; (ii) even vague allegations are "well-pleaded" if they give the opposing party notice of the claim; (iii) the Court must draw all reasonable inferences

---

[170] In this way, Sections 10.1(a)(8) and 11.1's specific limitations control over the more general provisions preserving remedies available to Members. JV Agr. §§ 13.8, 13.10; *Lehr*, 2026 WL 865854, at *8 (citing *DCV Hldgs., Inc. v. ConAgra, Inc*., 889 A.2d 954, 961 (Del. 2005) ("Specific language in a contract controls over general language, and where specific and general provisions conflict, the specific provision ordinarily qualifies the meaning of the general one.")).

> in favor of the non-moving party; and [(iv)] dismissal is inappropriate unless the "plaintiff would not be entitled to recover under any reasonably conceivable set of circumstances susceptible of proof."[171]

The touchstone "to survive a motion to dismiss is reasonable 'conceivability'."[172] That standard is "minimal" and plaintiff-friendly.[173] While "it may, as a factual matter, ultimately prove impossible for the plaintiff to prove his claims at a later stage of a proceeding, [] that is not the test to survive a motion to dismiss."[174] Despite this forgiving standard, the Court need not "accept conclusory allegations unsupported by specific facts" or "draw unreasonable inferences" in favor of the nonmoving party.[175] "Moreover, the court 'is not required to accept every strained interpretation of the allegations proposed by the plaintiff.'"[176]

1. MCS Fails To Plead Extracontractual Fraud, Promissory Estoppel, And Equitable Estoppel.

MCS presents three claims seeking recovery on misrepresentations, or promises, that MERA representatives allegedly made to induce MCS to enter into the JOA and the JV Agreement. Count I is a fraud claim, Count VI is a promissory

---

[171] *Savor, Inc. v. FMR Corp.*, 812 A.2d 894, 896–97 (Del. 2002) (footnotes omitted) (quoting *Kofron v. Amoco Chems. Corp.*, 441 A.2d 226, 227 (Del. 1982)).

[172] *Cent. Mortg. Co. v. Morgan Stanley Mortg. Cap. Hldgs. LLC*, 27 A.3d 531, 537 (Del. 2011).

[173] *Id.* at 539; *see Clouser v. Doherty*, 2017 WL 3947404, at *9 (Del. 2017); *In re USG Corp. S'holder Litig.*, 2021 WL 930620, at *3–4 (Del. Ch. Mar. 11, 2021).

[174] *Cent. Mortg.*, 27 A.3d at 536.

[175] *Clinton v. Enter. Rent-A-Car Co.*, 977 A.2d 892, 895 (Del. 2009).

estoppel claim, and Count VII is an equitable estoppel claim. As explained, the Court lacks personal jurisdiction over Warschawski and Gomez for these claims.[177] I turn to the merits against the MERA Affiliates and MERA.

MCS points to three statements by which MERA representatives enticed MCS to partner with MERA. In 2016, Gomez allegedly represented to Steve Mora that if MCS entered a consulting agreement with MERA, then MCS would enjoy a ROFR to partner with MERA or its affiliates in all of MERA's future U.S. concession ventures, and also that MERA would not compete with MCS.[178] MCS claims Gomez knew those representations were false, that he made them to induce MCS to partner with MERA at the Burbank Airport and to join the JV, and that MCS relied on those representations in entering into the JOA and JV Agreement.[179] Additionally, MCS alleges Warschawski represented in February 2020 and February 2021 that MCS would have control over the JV's bank account.[180] MCS alleges Warchawski knew his statement was false and said it to induce "MCS's critical partnership," only to exploit that partnership once MERA

---

[176] *In re Trados Inc. S'holder Litig.*, 2009 WL 2225958, at *4 (Del. Ch. July 24, 2009) (quoting *In re Gen. Motors (Hughes) S'holder Litig.*, 897 A.2d 162, 168 (Del. 2006)).

[177] *See supra* Section II(A)(2).

[178] TACC ¶ 21.

[179] *Id.* ¶¶ 21, 27, 76.

[180] *Id.* ¶¶ 23, 25.

established its relationship with RDUA.[181]

These allegations fail to state any claim against the MERA Affiliates. They do not even mention the MERA Affiliates. MCS attempts to sweep in the MERA Affiliates by swelling its allegations into a "scheme," or conspiracy.[182] To succeed, MCS must provide factual allegations the MERA Affiliates provided "substantial assistance mean[ing] that the secondary actor[s] must have provided assistance . . . or participation in aid of the primary actor's allegedly unlawful acts."[183] "In alleging fraud or mistake, a party must state with particularity the circumstances constituting fraud or mistake."[184] "[C]onclusory allegations of a 'scheme' are insufficient, and do not excuse the [p]laintiffs from their burden of properly stating a claim upon which relief may be granted."[185]

MCS simply does not allege the MERA Affiliates assisted or participated in

---

[181] *Id.* ¶¶ 21, 23, 25.

[182] *Id.* ¶¶ 20, 25, 42, 45; AB at 56–62.

[183] *Agspring Holdco v. NGP X US Hldgs.*, 2020 WL 4355555, at *21 (Del. Ch. July 30, 2020) (internal quotations marks omitted); *see Lake Treasure Hldgs., Ltd. v. Foundry Hill GP LLC*, 2013 WL 6184066, at *3 (Del. Ch. Nov. 21, 2013) ("To allege a conspiracy, a pleading must assert the existence of (1) two or more persons; (2) an object to be accomplished; (3) a meeting of the minds between or among such persons relating to the object or a course of action; (4) one or more unlawful acts; and (5) damages as a proximate result thereof." (internal quotation marks and citations omitted)).

[184] Ct. Ch. R. 9(b).

[185] *Thermopylae Cap. P'rs, L.P. v. Simbol, Inc.*, 2016 WL 368170, at *15 (Del. Ch. Jan. 29, 2016).

the alleged scheme. MCS alleges MERA controls the MERA Affiliates;[186] that MERA formed the MERA Affiliates to "unlawfully compete" with MCS and the JV;[187] that MERA Affiliates are structured as "single-asset limited liability companies" to minimize MERA's liability exposure in carrying out a "scheme" to exploit "smaller concessionaires" like MCS;[188] and that MERA used MERA Affiliates to "usurp business opportunities of the [JV]" in contravention of the JV Agreement.[189] The MERA Affiliates are also far removed from any fraudulent misrepresentations or promises to induce MCS to partner with MERA, which predated the formation of the MERA Affiliates.[190] MCS's allegations are conclusory and rely solely on the Affiliates' existence. MCS has not adequately pled that the MERA Affiliates contributed substantially to the scheme. MCS Counts I, VI, and VII are dismissed as against the MERA Affiliates.

---

[186] TACC ¶ 3.

[187] *Id.* ¶¶ 11–12 (alleging on information and belief).

[188] *Id.* ¶ 20 (alleging on information and belief).

[189] *Id.* ¶ 60 (alleging on information and belief); *see id.* ¶ 42.

[190] MCS argues the MERA Affiliates were utilized by MERA in orchestrating its "scheme," but the only allegations it identifies to support that argument are either made on information and belief or are wholly conclusory. AB at 17 (citing TACC ¶¶ 42, 60); AB at 53 (citing TACC ¶ 60); AB at 60 (citing TACC ¶¶ 12, 20, 42, 60); *see Metro Commc'n Corp. BVI v. Advanced Mobilecomm Techs. Inc.*, 854 A.2d 121, 144 (Del. Ch. 2004) (explaining under Rule 9(b) the Court "must disregard conclusory allegations unsubstantiated by specific factual details that would support a rational inference that a particular defendant committed common law fraud"); *In re Hennessy Cap. Acq. Corp. IV S'holder Litig.*, 318 A.3d 306, 329 (Del. Ch. 2024), *aff'd*, 337 A.3d 1214 (Del. 2024) (TABLE).

That leaves MERA. The extracontractual claims fail because the JOA, A&R JOA, and JV Agreements all have integration clauses and speak specifically to the subjects of the three alleged misrepresentations.[191]

MERA Hollywood and MCS entered the JOA in May 2017.[192] The JOA includes an integration clause providing that it "replaces and supersedes all prior written and oral agreements and understandings by and among the Parties."[193] The 2021 A&R JOA repeated that integration clause.[194] The JOA also states that MCS would receive a ROFR on future concessions ventures by "Affiliates" of MERA Hollywood.[195] The A&R JOA also provides MCS a ROFR with respect to future

---

[191] JOA §§ 3.1–3.2, 3.3(g) (providing the "provisions of this Article 3 . . . shall survive the termination or expiration date of this [JOA] for a period of two (2) years thereafter . . . ."), 8.1; A&R JOA §§ 3.1–3.2, 8.1, 8.8, 3.2(g) ("[I]f, in connection with any new Airport Contract, MERA [Hollywood] determines in its sole discretion that MERA [Hollywood] and MCS have unresolvable differences that are reasonably expected to have a material adverse effect on MERA [Hollywood] or the JV, MERA [Hollywood] shall have no further obligations under this Section 3.2 and may select a different JV Partner with respect to such new Airport Contract."); JV Agr. § 13.7.

[192] JOA at Recital.

[193] *Id.* § 8.1.

[194] A&R JOA § 8.1 ("This Agreement replaces and supersedes all prior contemporaneous written and oral agreements and understandings by and among the Parties with respect to the subject matter of this Agreement.").

[195] JOA §§ 3.1–3.2, Schedule 1 (defining the term "Affiliate" as "any Person directly or indirectly, through one or more intermediaries, controlling, controlled by or under common control with such Party. The term 'control' (including the terms 'controlled by' and 'under common control with') means possession of the power to direct or cause the direction of the management and policies of a Person, whether through membership, ownership of voting securities, by contract or otherwise"); *id.* (defining "Person" as "an individual, partnership, limited partnership, trust, estate, association, corporation, limited liability company or other entity, whether domestic of foreign").

concession ventures by MERA Hollywood's "Affiliates."[196]

Like the other two agreements, the 2019 JV Agreement contains an integration clause.[197] The JV Agreement further states that Members and Managers may not compete with the JV in North Carolina and grants control of the JV's bank account with the JV's "Managers"—not MCS.[198] The JV Agreement does not grant MCS any right to first refusal on MCS's future concessions agreements.[199]

Against this backdrop, Count I for fraud fails for a lack of justifiable reliance.[200] Where an integrated contract specifically speaks to the subject of the alleged misrepresentation, the integration clause and the parol evidence rule

---

[196] A&R JOA §§ 3.1–3.2.

[197] JV Agr. § 13.7 ("This Agreement contains the entire understanding between the parties relating to its subject matter, and all prior agreements, understandings, representations and statements, oral or written, shall be of no further force or effect.").

[198] *Id.* § 13.11(b) (prohibiting a "Manager or Officer or Operational Director" from competing with the JV in North Carolina while serving in such a role and "for a period of two years thereafter . . . ."); *id.* § 10.1(a)(10) (providing "the Managers shall have the right and obligation to . . . open and maintain [JV] bank accounts").

[199] *See generally* JV Agr.

[200] *See Trifecta Multimedia Hldgs. Inc. v. WCG Clinical Servs. LLC*, 318 A.3d 450, 465 (Del. Ch. 2024) ("The third element of a fraud claim is justifiable reliance. To plead this element, a plaintiff must allege facts making it reasonably conceivable that the plaintiff acted based on the material representation or omission. Assessing reliance requires a context-dependent inquiry that takes into account the plaintiff's knowledge and experience. The issue is not generally suitable for resolution on a motion to dismiss unless a fully integrated contract contains an explicit anti-reliance representation.").

preclude consideration of a prior agreement covering the same subject matter.[201] The parol evidence rule "prevents the use of extrinsic evidence of an oral agreement to vary a fully integrated agreement that the parties have reduced to writing."[202] And an integration clause "precludes reliance on precontractual understandings of facts that are found within the four corners of the agreement."[203] When, as here, parties enter into a fully integrated agreement, "[t]he parol evidence rule prevents the consideration of oral evidence that would *contradict* either total or partial integrated agreements."[204] A plaintiff cannot justifiably rely on any

---

[201] *Park7 Student Housing, LLC v. PR III/Park7 SH Hldgs., LLC*, 340 A.3d 614, 618–19 (Del. Ch. June 20, 2025); *Kronenberg v. Katz*, 872 A.2d 568, 592 (Del. Ch. 2004) (explaining integration clauses without anti-reliance language "simply operate[ ] to police the variance of the agreement by parol evidence"); *S'holder Representative Servs. LLC v. Albertsons Cos., Inc.*, 2021 WL 2311455, at *11 (Del. Ch. June 7, 2021) ("Delaware courts have found a lack of justifiable reliance at the pleading stage when the dispute involves alleged prior misrepresentations or omissions that run expressly counter to the terms of a fully integrated contract." (collecting cases)).

[202] *Taylor v. Jones*, 2002 WL 31926612, at *3 (Del. Ch. Dec. 17, 2002); *Scott v. Land Lords, Inc.*, 1992 WL 276429, at *3 (Del. 1992) (TABLE) ("'Where the parties have made a contract and have expressed it in writing to which they both assented as the complete and accurate integration of that contract, evidence, whether parol or otherwise, of antecedent understanding and negotiations will not be admitted for the purpose of varying or contradicting the writing.'" (quoting *Scott-Douglas Corp. v. Greyhound Corp.*, 304 A.2d 309, 315 (Del. Super. 1973))).

[203] *Park7 Student Housing*, 340 A.3d at 619; *see, e.g.*, *Trifecta*, 318 A.3d at 465 ("While a standard integration clause alone will not bar a fraudulent inducement claim, a standard integration clause does bar the admission of extrinsic evidence for the purpose of varying or contradicting the terms of that contract." (internal quotation marks and citations omitted)); *Scott*, 1992 WL 276429, at *3 (holding an integration clause barred consideration of pre-contract contrary statement).

[204] *Taylor v. Jones*, 2002 WL 31926612, at *3 (emphasis in original); *Fairstead Cap. Mgmt. LLC v. Blodgett*, 288 A.3d 729, 760 (Del. Ch. 2023) ("When a prior agreement

precontractual representation that is refuted by, or in this case even consistent with, a provision in an integrated contract.[205] MCS cannot plead justifiable reliance on precontractual representations on those topics, when it negotiated specific, and even favorable, provisions addressing those issues.[206] The Motions are granted as to Count I for fraud.

Count VI for promissory estoppel also fails because the JOA, A&R JOA, and JV address the subject matter of the alleged promises.[207] "[P]romissory estoppel is fundamentally a narrow doctrine, designed to protect the legitimate expectations of parties rendered vulnerable by the very processing of attempting to form commercial relationships."[208] To plead a promissory estoppel claim, the plaintiff must allege that:

---

and a subsequent agreement cover the same subject matter and the subsequent agreement contains an integration clause, the prior agreement 'need[s] to be memorialized in [the subsequent agreement]' to survive." (alterations in original) (quoting *Hunt v. Limestone Med. Prop., LLC*, 2018 WL 2939441, at *4 (Del. Ch. June 11, 2018))).

[205] *See Park7 Student Housing*, 340 A.3d at 620; *Albertsons*, 2021 WL 2311455, at *2 (finding no justifiable reliance when "the clear and unambiguous language of the Merger Agreement conflicts with each of the purported oral misrepresentations that [the defendant] is alleged to have made pre-closing"); *Black Horse Cap., LP v. Xstelos Hldgs., Inc.*, 2014 WL 5025926, at *22 (Del. Ch. Sept. 30, 2014) (stating that Plaintiffs found no case in which any court found justifiable reliance when "an oral promise was made that directly conflicted with the plain language of a subsequent written agreement covering the same subject matter").

[206] JV Agr. §§ 13.7, 13.11(b); A&R JOA §§ 3.1–3.2, 3.3(g), 8.1, 8.8; JOA §§ 3.1–3.2, 3.3(g), 8.1, 8.8.

[207] *See* AB at 36 (citing TACC ¶¶ 21, 23, 25).

[208] *Ramone v. Lang*, 2006 WL 905347, at *14 (Del. Ch. Apr. 3, 2006).

> (1) a promise was made; (2) it was the reasonable expectation of the promisor to induce action or forbearance on the part of the promisee; (3) the promisee reasonably relied on the promise and took action to his detriment; and (4) such promise is binding because injustice can be avoided only by enforcement of the promise.[209]

In *SIGA Technologies, Inc. v. PharmAthene, Inc.*, the Delaware Supreme Court noted promissory estoppel is inapplicable "where a fully integrated, enforceable contract governs the promise at issue."[210] So too here. MCS cannot rely on promissory estoppel where the integrated JOA, A&R JOA, and JV Agreement unambiguously and specifically address the very topics of the purported promises.[211]

Finally, Count VII for equitable estoppel fails for the same reason. To state a claim for equitable estoppel, a plaintiff must allege:

> (1) conduct by the party to be estopped that amounts to a false representation, concealment of material facts, or that is calculated to convey an impression different from, and inconsistent with that which the party subsequently attempts to assert, (2) knowledge, actual or constructive, of the real facts and the other party's lack of knowledge and the means of discovering the truth, (3) the intention or expectation that the conduct shall be acted upon by, or influence, the other party and good faith reliance by the other, and (4) action or forbearance by

---

[209] *Grunstein v. Silva*, 2009 WL 4698541, at *7 (Del. Ch. Dec. 8, 2009) (citing *PharmAthene, Inc. v. SIGA Techs., Inc.*, 2008 WL 151855, at *17 (Del. Ch. Jan. 16, 2008), and then citing *Lord v. Souder*, 748 A.2d 393, 399 (Del. 2000)).

[210] 67 A.3d 330, 348 (Del. 2013).

[211] *See* JOA §§ 3.1–3.2, 3.3(g), 8.1, 8.8; A&R JOA §§ 3.1–3.2, 3.3(g), 8.1, 8.8; JV. Agr. §§ 10.1(a)(10), 13.7.

the other party amounting to a change of status to his detriment.[212]

But equitable estoppel plays no role when the promise is reduced to a contract and supported by consideration.[213] "This Court does not lightly turn to equitable estoppel to enforce contract rights which cannot be vindicated as the contract is written."[214]

That is exactly what MCS is trying to do.[215] MCS secured or disregarded certain rights at the negotiating table; its rights are memorialized in the agreements; it entered the agreements after being afforded the opportunity to consult with counsel;[216] and the agreements are supported by consideration. MCS agreed the JV Agreement vests Managers with control of the JV's bank account

---

[212] *Olson v. Halvorsen*, 2009 WL 1317148, at *11 (Del. Ch. May 13, 2009) (internal quotation marks omitted) (quoting *Cornerstone Brands, Inc. v. O'Steen*, 2006 WL 2788414, at *3 n.12 (Del. Ch. Sept. 20, 2006)), *aff'd*, 986 A.2d 1150 (Del. 2009).

[213] *Hallisey v. Artic Intermediate*, LLC, 2020 WL 6438990, at *4 (Del. Ch. Oct. 29, 2020) (ORDER) ("Where the representation or promise at issue is documented in a contract supported by valid consideration, equitable estoppel is not applicable. In a dispute about enforcement of a bargained-for contract right, equitable estoppel is not the proper remedy."); *Genencor Int'l, Inc. v. Novo Nordisk A/S*, 766 A.2d 8, 12 (Del. 2000) (observing that the doctrine of equitable estoppel "is not applicable to cases in which the alleged promise is supported by consideration"); *see also Brandywine Shoppe, Inc. v. State Farm Fire & Cas. Co.*, 307 A.2d 806, 809 (Del. Super. 1973) ("As a general rule, the doctrines of estoppel and waiver may not be invoked to make a new contract, or to change radically the terms of the policy to cover additional subject matter.").

[214] *Vintage Rodeo Parent, LLC v. Rent-a-Center, Inc.*, 2019 WL 1223026, at *23 (Del. Ch. Mar. 24, 2019).

[215] AB at 37–39.

[216] JOA § 7.4; A&R JOA § 7.4; JV Agr. § 13.12.

and bars competition in North Carolina.[217] Likewise, MCS agreed to its ROFR and noncompete protections in the JOA and A&R JOA.[218] MCS chose not to include a ROFR in the JV's fully integrated contract. Because the representations at issue are documented in enforceable contracts, MCS cannot show it reasonably relied on precontractual representations concerning the JV's bank account, a ROFR, or MERA's ability to compete.[219]

The Motions are granted as to Counts I, VI and VII against MERA.

2. MCS Fails To Plead The MERA Affiliates And Gomez Breached The JV Agreement.

MCS asserts the Counterclaim Defendants breached the JV Agreement, specifically Sections 10.2.2, 4.7, 9.9, 7.1(b), and 13.11.[220] The MJOP Order addressed the removal of MCS's appointees and the repurchase of MCS's interest under the JV Agreement, including Sections 10.2.2 and 4.7, and rejected the idea that the JV Agreement was illegal under the governing regulations as invoked by Section 9.7.[221] That is now the law of the case.[222] Section 7.1(b) speaks to the

---

[217] MJOP Order, 2026 WL 1894905, at *4 (finding the JV Agreement "unambiguous"); JV Agr. §§ 10.1(a)(10), 13.11(b).

[218] JOA §§ 3.1–3.2, 3.3(g), 8.8; A&R JOA §§ 3.1–3.2, 3.3(g), 8.8.

[219] *Alchemy LTD LLC v. Fanchise League Co., LLC*, 2023 WL 4670954, at *9 (Del. Ch. July 20, 2023); *Vintage Rodeo*, 2019 WL 1223026, at *23.

[220] TACC ¶¶ 86–104.

[221] MJOP Order, 2026 WL 1894905, at *7–8.

[222] *Kenton v. Kenton*, 571 A.2d 778, 784 (Del. 1990) ("The 'law of the case' is established when a specific legal principle is applied to an issue presented by facts which

LLC's payment of its own expenses, and Section 13.11 imposes confidentiality and noncompete obligations.[223]

MCS fails to state a breach of contract claim against the MERA Affiliates and Gomez under the bedrock principle they are not parties to the JV Agreement. "It is well established in Delaware that only parties to a contract may be liable for breach of that particular contract."[224] Likewise, only parties to a contract are bound to its terms.[225] The JV Agreement is between MERA, MCS and La Farm;[226] MCS makes no attempt to extend the JV Agreement to the MERA

---

remain constant throughout the subsequent course of the same litigation." (citations omitted)); *TravelCenters of Am. LLC v. Brog*, 2008 WL 5101619, at *2 (Del. Ch. Nov. 21, 2008) (staying discovery pending resolution of defendants' motion for judgment on the pleadings and explaining "[i]f I were to enter judgment on the pleadings based on either of [defendants'] arguments, that ruling would become the 'law of the case'"); *State v. Wright*, 131 A.3d 310, 321 (Del. 2016) ("[A] trial court's previous decision in a case will form the law of the case for the issue decided."); *Zirn v. VLI Corp.*, 1994 WL 548938, at *2 (Del. Ch. Sept. 23, 1994) ("Once a matter has been addressed in a procedurally appropriate way by a court, it is generally held to be the law of that case and will not be disturbed by that court unless compelling reason to do so appears.").

[223] JV Agr. §§ 7.1(b), 13.11.

[224] *B&B Fin. Servs., LLC v. RFGV Festivals, LLC*, 2019 WL 5849770, at *3 (Del. Super. Nov. 7, 2019); *see Vichi v. Koninklijke Philips Elecs. N.V.*, 62 A.3d 26, 59 (Del. Ch. 2012) ("'[B]asic contract principles [recognize] that a person not a party to [a] contract cannot be held liable to it.'" (citing *Kuroda*, 971 A.2d at 892 (italics omitted)).

[225] *EEOC v. Waffle House, Inc.*, 534 U.S. 279, 294 (2002) ("It goes without saying that a contract cannot bind a nonparty."); *see Strougo v. Hollander*, 111 A.3d 590, 597 (Del. Ch. 2015); *Am. Legacy Found. v. Lorillard Tobacco Co.*, 831 A.2d 335, 343 (Del. Ch. 2003) ("There is no doubt that a fundamental principal of contract law provides that only parties to a contract are bound by that contract." (citations omitted)); *Wallace v. Wood*, 752 A.2d 1175, 1180 (Del. Ch. 1999).

[226] *See generally* JV Agr.; Letter Agr.

Affiliates as nonsignatories.[227]

As for Gomez, he might have signed the JV Agreement and Letter Agreement. It is unclear whether the two signatures on the JV Agreement and Letter Agreement by "Rafael Aguirre" were by Gomez, De La Torre, or both.[228] But if Gomez signed those contracts, he bound entities as a manager of the JV and/or MERA, not in his personal capacity.[229] Count III is dismissed as against the MERA Affiliates and Gomez.

3. MCS Fails To State A Claim For Breach Of The Implied Covenant.

MCS asserts a claim for breach of the implied covenant of good faith and fair dealing against Counterclaim Defendants.[230] MCS claims the implied covenant constrains the Managers' discretion in removing the Operational Director.[231] Counterclaim Defendants allegedly breached the covenant by removing the Operational Director to trigger the repurchase of MCS's interest, as the capstone of their bad faith scheme to partner with MCS to access RDUA and

---

[227] AB at 23.

[228] JV Agr. at 30; Letter Agr. at 5–6. The TACC does not specifically allege whether Gomez or De La Torre executed the JV Agreement.

[229] *See* JV Agr. §§ 7.2, 10.5(a); Restatement (Third) Of Agency § 6.01 cmt. b (A.L.I. 2006) ("An agent who enters into a contract on behalf of a disclosed principal does not become a party to the contract and is not subject to liability as a guarantor of the principal's performance unless the agent and the third party so agree.").

[230] TACC ¶¶ 105–13.

[231] *Id.* ¶ 110.

then kick it out.[232]

"The implied covenant of good faith and fair dealing inheres in every contract and 'requires 'a party in a contractual relationship to refrain from arbitrary or unreasonable conduct which has the effect of preventing the other party to the contract from receiving the fruits' of the bargain.'"[233] "To state a claim for breach of the implied covenant, the Plaintiffs 'must allege a specific implied contractual obligation, a breach of that obligation by the defendant, and resulting damage to the plaintiff.'"[234] The implied covenant cannot be invoked to "override express provisions of a contract"[235] or to contradict the exercise of an expressly granted contractual right.[236]

The Delaware Supreme Court has recognized that the implied covenant can apply in two primary scenarios. The first is when a party invokes the covenant to imply an omitted right or obligation.[237] MCS does not identify any gap in the

---

[232] *Id.*

[233] *Kuroda*, 971 A.2d at 888 (quoting *Dunlap v. State Farm Fire & Cas. Co.*, 878 A.2d 434, 442 (Del. 2005)).

[234] *Wiggs v. Summit Midstream P'rs, LLC*, 2013 WL 1286180, at *9 (Del. Ch. Mar. 28, 2013) (quoting *Fitzgerald v. Cantor*, 1998 WL 842316, at *1 (Del. Ch. Nov. 10, 1998)).

[235] *Kuroda*, 971 A.2d at 888.

[236] *Id.*; *see Nemec v. Shrader*, 991 A.2d 1120, 1128 (Del. 2010).

[237] *Johnson & Johnson v. Fortis Advisors LLC*, 352 A.3d 229, 253–54 (Del. 2026); *see Glaxo Gp. Ltd. v. DRIT LP*, 248 A.3d 911, 919 (Del. 2021) ("Subject to the express terms of the agreement, when gaps in an agreement lead to controversy, the court has in its toolbox the implied covenant of good faith and fair dealing to fill in the spaces between the written words.").

parties' agreement. As described in the MJOP Order, the JV Agreement explicitly and unambiguously governs the removal of MCS's appointees and the repurchase of its interest.[238]

The implied covenant also operates "when a contract allocates discretionary authority to one party over a central aspect of the contract" and a party challenges how that discretion was wielded.[239] "When the party exploits that discretion in a manner that defeats the 'overarching purpose' of the bargain, courts may imply a requirement that such discretion be exercised reasonably and in good faith to ensure that the discretionary power is applied consistently with what reasonable parties would have agreed to at signing."[240]

"'Discretion' in the implied covenant context does not exist wherever a party to the contract has some decision-making flexibility."[241] The Court considers "'whether the parties would have bargained for a contractual term proscribing the conduct that allegedly violated the implied covenant had they foreseen the

---

[238] MJOP Order, 2026 WL 1894905, at *3–7.

[239] *Johnson & Johnson*, 352 A.3d at 253.

[240] *Id.*; *see Winshall v. Viacom Int'l, Inc.*, 55 A.3d 629, 636–37 (Del. Ch. 2011) ("[T]he implied covenant of good faith and fair dealing should not be applied to give plaintiffs contractual protections that 'they failed to secure for themselves at the bargaining table.'" (quoting *Aspen Advisors LLC v. United Artists Theatre Co.*, 861 A.2d 1251, 1260 (Del.2004)).

[241] *PPL Corp. v. Riverstone Hldgs. LLC*, 2019 WL 5423306, at *12 (Del. Ch. Oct. 23, 2019).

circumstances under which the conduct arose.'"[242] Where the contract reflects that the parties contemplated whether one party might take a particular action with particular consequences, the implied covenant should not be deployed.[243]

> It is one thing to imply a good faith obligation when the parties have expressly agreed that a certain act is within a party's discretion. It is another matter to imply discretion to restrict actions expressly permitted by the parties' agreement. The implied covenant imposes a good faith and fair dealing obligation when a contract confers discretion on a party. It should not be used to imply terms that modify or negate an unrestricted contractual right authorized by an agreement.[244]

Section 10.4.1 of the JV Agreement grants the Managers authority to remove an Operational Director "with or without cause at any time."[245] From there, the JV Agreement specifies that removal would trigger repurchase of the affiliated Member's interest on particular terms.[246] When a Member or its representative ceases to serve as an Operational Director "for any reason," the Member becomes a "Terminated Member," and the JV has the right to repurchase the Terminated

---

[242] *Chordia v. Lee*, 2024 WL 49850, at *36 (Del. Ch. Jan. 4, 2024) (quoting *Baldwin v. New Wood Res. LLC*, 283 A.3d 1099, 1118 (Del. 2022)); *see also Glaxo*, 248 A.3d at 920–21 (explaining the implied covenant "should not be used to imply terms that modify or negate an unrestricted contractual right authorized by an agreement").

[243] *Glaxo*, 248 A.3d at 920; *see Comcast Cable Comc'ns Mgmt, LLC v. CX360, Inc.*, 2024 WL 5251997, at *15–16 (Del. Ch. Dec. 31, 2024).

[244] *Glaxo*, 248 A.3d at 920–21 (internal citations omitted).

[245] JV Agr. §§ 4.7, 10.4.1.

[246] *Id.* § 9.7; Letter Agr. ¶ 8.

Member's membership interest.[247] MCS secured extensive contractual protections governing that repurchase, including a neutral valuation expert and dispute resolution mechanism.[248] MCS also retained the right to appoint a replacement Manager, and the Managers are vested with the right to appoint Operational Directors.[249]

The Managers' use of the authority MCS granted them—to remove the Operational Director "with or without cause at any time"—triggered the exact consequences MCS agreed upon, in which MCS enjoys the protections it secured.[250] MCS knew as a minority member it was vulnerable and that the

---

[247] Letter Agr. ¶ 8.

[248] JV Agr. §§ 4.7, 9.7, 12.1; Letter Agr. ¶ 3. Indeed, these rights have already been enforced: the MJOP Order vindicated MCS's right to appoint a neutral CPA, finding the attempted repurchase to be invalid and ordering the parties to comply with the terms of the JV Agreement, as amended by the Letter Agreement. *MERA USA, LLC v. MCS Burbank, LLC*, 2026 WL 1894905, at *8 (Del. Ch. June 15, 2026) ("The JV has the right to repurchase MCS's interest. But MCS has the right to have a neutral CPA determine the Interest Purchase Price. . . . The parties must follow the valuation procedure they agreed upon. The January 25 Written Consent's determination of an Interest Purchase Price contravened the JV Agreement, as amended by the Letter Agreement, and is therefore defective. The parties are hereby ordered to perform under Section 1.20 of the JV Agreement as amended by the Letter Agreement . . . .").

[249] JV Agr. § 1.26 (providing MCS the right to appoint one Manager); *id*. § 12.1 (stating a Manager's removal "shall not affect the Manager's rights as a Member . . . or constitute a withdrawal of a Member"); *id*. § 10.4.1 (providing "Managers may" appoint "Members or Managers" to serve as Operational Director); *id*. § 10.1(a) ("Actions or decisions by the Managers will be made by majority vote of Managers, unless otherwise indicated herein.").

[250] *See Chordia v. Lee*, 2024 WL 49850, at *35–36 (Del. Ch. Jan. 4, 2024) (noting the implied covenant should not operate where the parties understood both the unilateral authority and the consequences of that authority).

provision could be used against "difficult" members.[251] MCS "cannot use the implied covenant to vary the express terms" of the JV Agreement, which gave its Managers "an unqualified right" to terminate the Operational Director and trigger the repurchase.[252]

MCS relies on *SerVaas v. Ford Smart Mobility LLC*, which applied the implied covenant in employment agreements.[253] There, one agreement granted unvested compensation if the employee was fired without cause, while another required the employee remain employed to receive vested compensation.[254] *SerVaas* noted that express requirements for cause made the employer's subjective motivations "meaningless": if the employee were terminated purportedly for cause but the requirements were not met, those requirements would preserve the employee's benefit of the bargain.[255] Still, *SerVaas* followed precedent applying the implied covenant in employment contracts to constrain the employer's subjective motivations: where an employment contract provided different

---

[251] MCS itself planned on using this provision against the other minority member. TACC ¶ 28 ("MCS was coerced and unduly influenced into signing the Letter Agreement because the intent of the amendment was to – with the approval of RDU – remove La Farm as a partner not a licensor [of] the brand in the event they became difficult or refused to cooperate.").

[252] *Glaxo*, 248 A.3d at 921 ("DRIT cannot use the implied covenant to vary the express terms of the Agreement, which gave GSK an unqualified right to disclaim the '092 Patent and end its royalty obligation.").

[253] 2021 WL 3779559, at *10 (Del. Ch. Aug. 25, 2021).

[254] *Id.* at *2–3, *9–10.

outcomes for terminations with and without cause, and was silent as to subjective motivation, the implied covenant prohibited a bad faith termination for cause in order to secure that outcome.[256] And where an employment contract was also silent as to the grounds for termination, the implied covenant prohibited termination in a bad faith scheme to oust significant employees and as "a pretext to cut costs."[257]

SerVaas and the employment cases it cites are inapposite here. Those cases addressed employers pulling the lever of for-cause termination to eliminate a condition for payment, where the employment contract did not expressly permit them to do so. Here, members of an LLC knowingly agreed in their constitutive document to express terms allowing the majority member to remove an Operational Director, then buy them out.[258] The JV Agreement grants a broad swath of reasons to remove an Operational Director: "with or without cause at any time."[259] And the JV Agreement expressly provides that removal of the Operational Director sets in motion buyout procedures that protect MCS.[260] That

---

[255] *Id.* at *9–10.

[256] *Id.* at *9 (discussing *Sheehan v. AssuredPartners, Inc.*, 2020 WL 2838575 (Del. Ch. May 29, 2020) and *Smith v. Scott*, 2021 WL 1592463 (Del. Ch. Apr. 23, 2021)).

[257] *Id.* at *10.

[258] TACC ¶ 30.

[259] JV Agr. § 10.4.1.

[260] AB at 33–34.

removal did not pull the rug out from under MCS; it triggered MCS's bargained-for contractual consequences and protections. MCS cannot rely on the implied covenant to walk back its express agreement that MERA could remove its Operational Director and then buy MCS out.[261]

More fundamentally, MCS's implied covenant claim fails because MERA's alleged bad faith manifested before and beyond the JV Agreement. The implied covenant runs with contracts, not with relationships.[262] MERA's alleged bad faith act, scheming to partner with MCS with the intention of ousting it from the JV, occurred years before the JV Agreement's formation: the JV Agreement was formed as part of that scheme.[263] Under MCS's logic, the JV Agreement's removal

---

[261] *Nemec*, 991 A.2d at 1128 (Del. 2010) ("A party does not act in bad faith by relying on contract provisions for which that party bargained where doing so simply limits advantages to another party. . . . The policy underpinning the implied duty of good faith and fair dealing does not extend to post contractual rebalancing of the economic benefits flowing to the contracting parties.").

[262] *Guilbeau v. Footprint Int'l Holdco, Inc.*, 358 A.3d 248, 276–77 (Del. Ch. 2026) ("A court deploying the implied covenant 'does not ask what duty the law should impose on the parties given their relationship at the time of the wrong, but rather what the parties would have agreed to themselves had they considered the issue in their original bargaining positions at the time of contracting.'" (quoting *Gerber v. Enter. Prods. Hldgs., LLC*, 67 A.3d 400, 418 (Del. 2013), *overruled on other grounds by Winshall*, 76 A.3d 808); *see Nemec*, 991 A.2d at 1126 ("When conducting [implied covenant] analysis, we must assess the parties' reasonable expectations at the time of contracting.").

[263] TACC ¶ 110 ("Counterclaim Defendants' bad faith in executing this scheme…"); AB, at 31 ("Counterclaim Defendants breached the implied covenant [] by removing the MCS-appointed Operational Director in bad faith as part of its broader scheme to oust MCS and repurchase its membership interest at a deflated price."); AB, at 1 ("Unbeknownst to MCS, [Gomez's] representations that [MERA] would not compete with MCS were false and concealed a scheme to take advantage of MCS in order to . . . and ultimately oust MCS.").

procedures would be unenforceable ab initio. In that world, MERA could never have used its removal powers in good faith, and MCS's bargained-for protections would be superfluous. MCS's theory is not actually an exercise of contractual discretion in bad faith: it speaks to the creation of that contract, not its performance. MCS's theory more closely tracks a fraud-in-the-inducement claim, which this Court has dismissed.[264]

The MERA Affiliates and Gomez are not parties to the JV Agreement, so they are not bound by its implied terms.[265]

The Motion is granted as to Count IV against MERA, the MERA Affiliates, and Gomez.

4. MCS's Claim For Declaratory Relief And Accounting Proceeds Against MERA.

Count VIII seeks declaratory relief and accounting against the Counterclaim Defendants.[266] The Third-Party Defendants moved to dismiss Count VIII, which MCS subsequently dropped against the Third-Party Defendants.[267] The Third-

---

264 *See supra* Section II(C)(1).

265 *See Tekstrom, Inc. v. Savla*, 918 A.2d 1171 (Del. 2007) (upholding the trial court's holding that an employee was not personally liable for the company's breach of the implied covenant because he signed the contract at issue solely in his representative capacity as a disclosed principal).

266 TACC ¶¶ 133–38.

267 TOB at 3; MCS's answering brief only mentions that MERA did not move to dismiss Count VIII. AB at 6; *see Emerald P'rs v. Berlin*, 726 A.2d 1215, 1224 (Del.

Party Defendants' Motion is granted as to Count VIII. MERA did not move to dismiss that claim. It will proceed against MERA.

III. CONCLUSION

Counts I, II, IV, V, VI, VII, and IX are dismissed in their entirety. Counts III and VIII are dismissed as against Warschawski, Gomez, and the MERA Affiliates. They proceed against MERA with the MJOP Order serving as law of the case.

1999) ("Issues not briefed are deemed waived."); *In re Dow Chem. Co. Deriv. Litig.*, 2010 WL 66769, at *14 (Del. Ch. Jan. 11, 2010) ("Plaintiffs quietly abandoned these arguments when they failed to respond to defendants' arguments . . . .").