

IN THE COURT OF CHANCERY OF THE STATE OF DELAWARE

BLUE FIRE CAPITAL, LLC,	)	
	)	
Plaintiff,	)	
	)	
v.	)	C.A. No. 2023-1181-BWD
	)	
ROBERT A. LINDEMAN,	)	
R & M ADVISORS, LLC,	)	
	)	
Defendants,	)	
	)	
and	)	
	)	
PIES & PINTS DEVELOPMENT	)	
PARTNERS, LLC,	)	
	)	
Nominal Defendant.	)	

**MEMORANDUM OPINION RESOLVING CROSS-MOTIONS FOR
SUMMARY JUDGMENT**

Date Submitted: September 29, 2026

Date Decided: October 16, 2026

Alisa E. Moen, MOEN LAW LLC, Wilmington, DE; Brian M. Gottesman, GABELL BEAVER LLC, Wilmington, DE; *Attorneys for Plaintiff Blue Fire Capital, LLC.*

E. Chaney Hall and Griffin A. Schoenbaum, FOX ROTHSCHILD LLP, Wilmington, DE; OF COUNSEL: Brian Wcislo, WCISLO LAW GROUP, Dallas, TX; *Attorneys for Defendants Robert A. Lindeman and R&M Advisors, LLC and Nominal Defendant Pies & Pints Development Partners, LLC.*

DAVID, V.C.

The parties in this action each own 50% of the membership interests of Pies & Pints Development Partners, LLC (“PPDP”), a Delaware limited liability company. Under PPDP’s limited liability company operating agreement, either member may make a written offer to buy the other member’s entire interest or sell its own interest for a cash payment. The parties dispute whether a series of letters exchanged in 2021 triggered that “buy/sell” provision, with each member arguing that it is entitled to buy out the other. On cross-motions for summary judgment, I conclude that neither party made an offer subject to the “buy/sell” provision in the operating agreement, and therefore enter judgment for the defendants on the plaintiff’s claims and judgment for the plaintiff on the defendants’ counterclaims.

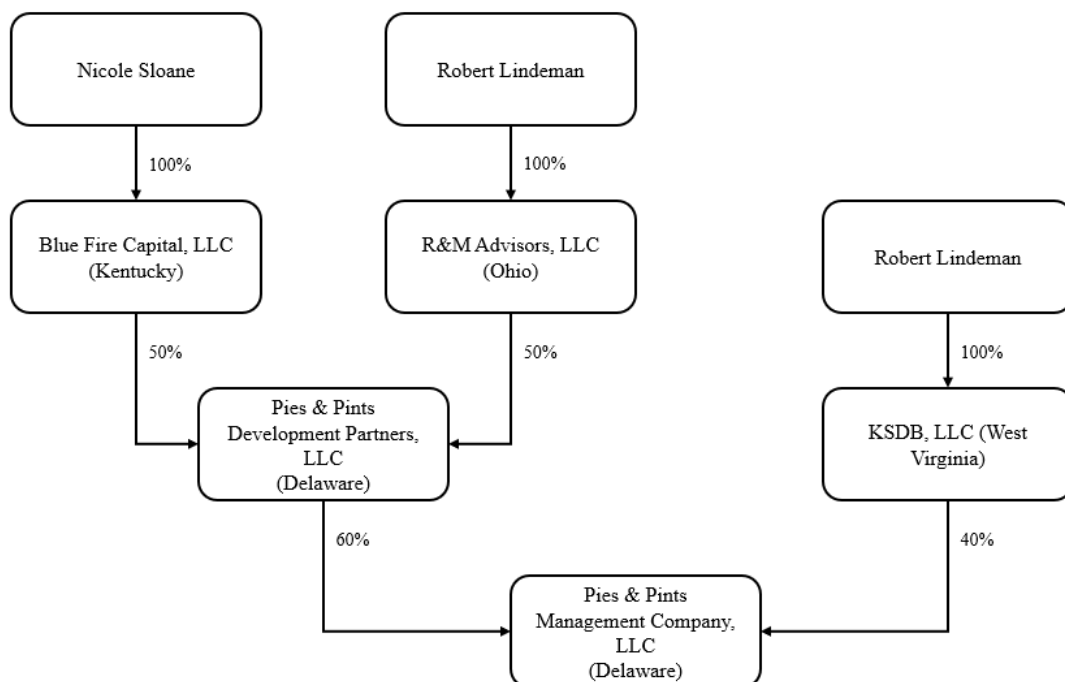
I. BACKGROUND

A. The Parties And Relevant Nonparties

Pies & Pints Management Company, LLC (“PPMC”) is a Delaware limited liability company that oversees and manages eleven locations of “Pies & Pints”—a restaurant chain that features craft pizzas and beer—and its associated trademarks and branding. Blue Fire Capital, LLC’s Verified Compl. [hereinafter Compl.] ¶ 2, Dkt. 1; Defs.’ and Nominal Def.’s Ans. to Blue Fire Capital, LLC’s Verified Compl. and Def. R&M Advisors, LLC’s Verified Countercl. [hereinafter Ans. or Countercls.] ¶ 2, Dkt. 33.

Nominal defendant PPDP, also a Delaware limited liability company, owns 60% of the membership interests in PPMC. Compl. ¶ 3; Ans. ¶ 3. Plaintiff Blue Fire Capital, LLC (“Blue Fire”) and defendant R & M Advisors, LLC (“R&M”) each own a 50% membership interest in PPDP. Compl. ¶ 4; Ans. ¶ 4. Defendant Robert A. Lindeman owns R&M and serves as the manager of both PPMC and PPDP. Compl. ¶ 20; Ans. ¶ 20. Lindeman also owns non-party KSDB, LLC, a West Virginia limited liability company, which in turn owns the remaining 40% of the membership interests of PPMC. Compl. ¶¶ 3, 67; Ans. ¶¶ 3, 67; *see also* Def. R&M Advisors, LLC’s Opening Br. In Supp. Of Its Mot. For Partial Summ. J. And Answering Br. In Opp’n To Pl.’s Mot. for Partial Summ. J. [hereinafter DOB] at 6, Dkt. 65.

The following chart depicts the ownership structure of PPMC and PPDP:



See Compl. ¶ 20; DOB at 6.

B. Section 9.12 Of The Operating Agreement

PPDP is governed by the Limited Liability Company Operating Agreement of Pies & Pints Development Partners, LLC (the “Operating Agreement”). Compl. ¶ 25; Ans. ¶ 25; *see* Compl., Ex. 1 [hereinafter OA].

Section 9.12 of the Operating Agreement includes a mechanism under which either member may make a written offer to buy the other member’s entire interest or sell its own interest for a cash payment (a “Buy/Sell Offer”):

Each Member or Members (collectively, the “Offeror”) shall have the right at any time to serve upon any one or more of the other Members (collectively, the “Offeree”) a notice in writing which shall contain an offer to sell the entire Interest in the Company of the Offeror or to purchase the entire Interest in the Company of the Offeree, as set forth below. Any Transfer of an Interest under this provision is not subject to any of the Transfer restrictions set forth in Article 9.

(a) **No offer shall be subject to the provisions of this Section 9.12 unless such offer is both an offer to sell the entire Interest of the Offeror and an offer to purchase the entire Interest of the Offeree**, and such offer must specify the selling or purchase price and that the price of the Interest to be so transferred shall be paid in cash. The selling price and the purchase price specified in such offer must be computed on the basis of the same Interest value. Such offer shall be irrevocable for a period of sixty (60) days (the “Offer Period”), and the Offeree may, on or before the end of the Offer Period, accept either the offer to sell or the offer to purchase (but not both), and upon acceptance, the Offeror shall be required to sell or to purchase, as the case may be.

OA § 9.12 (emphasis added).

If the Offeree does not accept the offer to buy or to sell within 60 days, the Offeror may purchase the Offeree's interest at the offer price:

(b) If the Offeree fails within said sixty (60) day period to accept either of said offers, then the offers shall automatically expire and be of no further force and effect; provided, however, that the Offeror shall thereupon have the right, on or before the fifteenth (15th) day after the expiration of said sixty (60) day period, to purchase the Interest of the Offeree, at the applicable price as specified in Section 9.12(a), and if the Offeror exercises such right, the Offeree shall be required to sell. If the Offeror fails to exercise its right to purchase or sell within the time specified, either party may thereafter make a new offer pursuant to this Section 9.12.

Id. § 9.12(b).

C. R&M's March 10 Letter

On March 10, 2021, R&M sent a letter to Blue Fire ("R&M's March 10 Letter") with the subject line "Pies & Pints Development Partners, LLC – Notice of Buy/Sell Offer." Compl., Ex. 7 [hereinafter R&M's March 10 Letter] at 1; *see* Compl. ¶ 54; Ans. ¶ 54. R&M's March 10 Letter stated:

This letter serves as notice of R&M Advisors, LLC's ("Buyer" or "Offeror") offer to purchase Blue Fire Capital, LLC's ("Seller" or "Offeree") entire Percentage Interest in Pies & Pints Development Partners, LLC ("PPDP" or "Company"). . . .

Pursuant to Section 9.12 of the Operating Agreement, Buyer makes [the] below offer to Seller.

R&M’s March 10 Letter at 1. Although the subject line of R&M’s March 10 Letter stated that it was a “Buy/Sell Offer,” the letter itself offered only to purchase Blue Fire’s interest, and not to sell R&M’s interest to Blue Fire. *Id.*

R&M’s March 10 Letter proposed that R&M “shall pay to” Blue Fire \$1.3 million “in two separate checks,” one in the amount of \$1,274,734.50 to Blue Fire and another in the amount of \$25,265.50 “to Arnold and Clifford, LLP on behalf of [Blue Fire] for their representation of [Blue Fire]” in an action then pending in Ohio state court captioned *CCS Constr. Co., LLC v. Liberty Ctr., LLC, et al.*, Case No. 19-CV-005988 (Ohio Ct. Com. Pl.) (the “Lotus Pad Lawsuit”). *Id.*; *see* Compl. ¶ 55; Ans. ¶ 55.

R&M’s March 10 Letter also purported to impose additional “[o]bligations” on R&M and Blue Fire (the “Release Terms”). R&M’s March 10 Letter at 1–2. First, R&M’s March 10 Letter agreed that R&M would “indemnify [Blue Fire] in all lawsuits currently pending against [Blue Fire] and/or the Company concerning Pies & Pints Restaurant or its affiliates including, without limitation, the [Lotus Pad Lawsuit].” *Id.* at 1. Second, it required Blue Fire to “dismiss the pending civil matter against [R&M] with prejudice, styled *Blue Fire Capital, LLC v. Pies & Pints Development Partners, LLC, and Robert A. Lindeman*, Case No. 2:20-CV-02982-KAJ” (S.D. Ohio). *Id.* at 2. And third, R&M’s March 10 Letter contemplated that R&M would release Blue Fire from liability “concerning [Blue Fire’s] Percentage

Interest and [Blue Fire's] involvement with the Company," as well as liability related to a note purchase agreement. *Id.*

R&M's March 10 Letter stated that, "[p]ursuant to Section 9.12(c) of the Operating Agreement, the closing of the above purchase and sale shall be held no later than the one hundred twentieth (120) day from the date of this offer" and that, "[p]ursuant to Section 9.12(a) of the Operating Agreement, the above offer will remain open for sixty (60) days." *Id.*

D. Blue Fire's April 30 Response

On April 29, R&M sent a letter to Blue Fire ("R&M's April 29 Letter"), expressing a "strong preference" to buy out Blue Fire's interest. Compl., Ex. 8 [hereinafter R&M's April 29 Letter]. That letter referred to a "pending" "buy-sell" and separately stated that "the buy-sell provisions of the PPDP Operating Agreement have been triggered." *Id.* at 1–2.¹

On April 30, Blue Fire sent a response letter to R&M's March 10 Letter ("Blue Fire's April 30 Response") with the subject line "Response to Pies & Pints Development Partners, LLC – Notice of Buy/Sell Offer." Compl., Ex. 9 [hereinafter Blue Fire's April 30 Resp.] at 1.

¹ Neither party contends that this letter made or accepted an offer, but Blue Fire argues that the letter is evidence of R&M's intent to make a Buy/Sell Offer. Pl.'s Opening Br. In Supp. Of Partial Summ. J. [hereinafter POB] at 8, Dkt. 62.

Although R&M's March 10 Letter did not offer to sell R&M's interest to Blue Fire, Blue Fire characterized R&M's March 10 Letter as "both an offer to sell the entire Interest held by R&M to Blue Fire and an offer for R&M to purchase the entire Interest held by Blue Fire." *Id.* Blue Fire's April 30 Response purported to "accept[] . . . R&M's offer to sell R&M's entire Interest in the Company . . . to Blue Fire in exchange for the Purchase Price, to be paid by Blue Fire in cash." *Id.*

Blue Fire's April 30 Response stated that, "[a]s required by the Operating Agreement, R&M agree[d] to execute any and all . . . instruments and cooperate in giving effect to the transactions described [t]herein." *Id.* at 1–2. But Blue Fire did not accept the Release Terms:

Other than the offer of purchase and sale of Interest for the Purchase Price in cash, any other terms discussed in the Offer Letter are outside of the scope of Section 9.12 of the Operating Agreement, are not accepted or rejected by Blue Fire and such terms shall not constitute terms or conditions of the purchase and sale discussed in this letter.

Id. at 2.

E. R&M's May 13 Reply

On May 13, R&M sent a letter in reply to Blue Fire's April 30 Response ("R&M's May 13 Reply") with the subject line "Pies & Pints Development Partners, LLC – Notice of Buy/Sell Offer." Compl., Ex. 10 [hereinafter R&M's May 13 Reply] at 1.

R&M's May 13 Reply took the position that Blue Fire's April 30 Response constituted a counteroffer to, rather than acceptance of, the offer set out in R&M's March 10 Letter. *Id.* R&M's May 13 Reply claimed that Blue Fire's April 30 Response "failed to accept either [R&M's] offer to buy [Blue Fire's] entire interest in [PPDP] or R&M's offer to sell its entire interest in PPDP." *Id.* According to R&M, because Blue Fire did not accept the Release Terms, "the purported acceptance in [Blue Fire's April 30 Response] [was] not on identical terms as R&M's offer [in R&M's March 10 Letter] and 'neither accept[ed] or reject[ed]' terms that were included in R&M's offer designed to achieve finality to [R&M's] or [Blue Fire's] ownership in PPDP as Section 9.12 intends." *Id.*

R&M asserted that, as a result, Blue Fire "ha[d] failed, within the sixty (60) day period to accept either of R&M's said offers." *Id.* R&M's May 13 Reply concluded:

[P]ursuant to Section 9.12(b) of [the Operating Agreement], R&M now exercises its right to purchase [Blue Fire's] interest in PPDP before the fifteenth (15) day after the expiration of the Offer Period.

Alternatively, if [Blue Fire] takes the position that R&M's original offer under the buy/sell was somehow invalid under Section 9.12 of the [Operating Agreement], then this letter serves as official notice of R&M's acceptance of [Blue Fire's] offer pursuant to the buy/sell dated April 30, 2021 whereby R&M Advisors will purchase [Blue Fire's] full interest in PPDP.

Id. at 1–2 (emphasis omitted).

F. Procedural History

More than two years later, on November 21, 2023, Blue Fire initiated this action through the filing of a Verified Complaint (the “Complaint”), asserting claims against R&M and Lindeman (together, “Defendants”). Count I of the Complaint asserts a derivative claim on behalf of PPDP against Lindeman for breach of fiduciary duty. Compl. ¶¶ 72–77. Count II seeks a declaratory judgment that Blue Fire’s April 30 Response obligates R&M to sell its interest in PPDP for the purchase price therein. *Id.* ¶¶ 78–82. Count III alleges that R&M breached its contractual obligations under Section 9.12 of the Operating Agreement by refusing to sell its interest in PPDP after Blue Fire’s April 30 Response. *Id.* ¶¶ 83–88. Count IV seeks an order of specific performance requiring R&M to comply with its obligations under Section 9.12 of the Operating Agreement by selling its interest in PPDP to Blue Fire. *Id.* ¶¶ 89–94.

On December 26, 2024, Defendants filed an answer and counterclaims (the “Counterclaims”). Count I of the Counterclaims seeks a declaratory judgment that R&M validly exercised its right to purchase Blue Fire’s interest in PPDP pursuant to Section 9.12 of the Operating Agreement, or that R&M validly accepted the purported counteroffer in Blue Fire’s April 30 Response. Countercls. ¶¶ 21–25. Count II alleges that Blue Fire breached Section 9.12 of the Operating Agreement by refusing to sell its interest in PPDP to R&M. *Id.* ¶¶ 26–35. Count III seeks an

order of specific performance directing Blue Fire to comply with its obligations under Section 9.12 of the Operating Agreement by selling its interest in PPDP to R&M. *Id.* ¶¶ 36–41.

In June 2025, while this action was pending, the parties signed a Membership Interest Purchase Agreement and Paripassu Redemption Agreement (the “MIPA”). DOB, Ex. 5 [hereinafter MIPA]. The MIPA “provide[s] for the sale to [Blue Fire] . . . of all the percentage of Membership Interest owned of record by” KSDB and R&M. *Id.* at 1. On July 11, 2025, KSDB and R&M filed an action in the U.S. District Court for the Northern District of Texas alleging that Blue Fire had breached the MIPA by failing to place funds in escrow and seek to stay this litigation. Defs.’ Mot. to Stay, Ex. B, Dkt. 44. Blue Fire has taken the position that the MIPA is “an incomplete and unfinished draft agreement” and does not bind the parties. Pl. Blue Fire Capital, LLC’s Combined Reply and Answering Br. In Supp. Of Its Mot. For Summ. J. On Counts II–IV Of Its Verified Compl. And The Countercls. [hereinafter PAB] at 2, 25, Dkt. 67.

On August 5, 2025, Defendants moved to stay discovery in this action (the “Motion to Stay Discovery”) on the basis that Blue Fire agreed in the MIPA to stay this action. Dkt. 44. On December 10, then-Vice Chancellor Zurn, to whom this action was assigned, denied the Motion to Stay Discovery, explaining:

Whether the parties agreed to stay this action is hotly disputed. Staying this action while that dispute is resolved outside of this court would

effectively give effect to an agreement that may not have been reached. And these parties have no credibility when they profess to want to litigate efficiently. The motion to stay is DENIED. The parties shall keep this Court apprised of material developments in the MIPA action.

Dkt. 58.

On January 7, 2026, Blue Fire moved for partial summary judgment in its favor on Counts II, III, and IV of the Complaint and Counts I, II, and III of the Counterclaims. Dkt. 62. On February 10, R&M cross-moved for partial summary judgment in its favor on the same counts. Dkt. 64. Briefing on the motions (together, the “Cross-Motions”) concluded on March 13,² and this action was reassigned to me on July 6. Dkt. 71. The Court heard oral argument on September 29. Dkt. 77.

II. ANALYSIS

The Court will enter summary judgment where “there is no genuine dispute as to any material fact and the movant is entitled to judgment as a matter of law.” Ct. Ch. R. 56(a). Ordinarily, “[w]hen the Court is faced with cross-motions for summary judgment[,], the same standard must be applied to each of the parties’ motions and the mere existence of cross-motions does not necessarily indicate that summary judgment is appropriate for one of the parties.” *Baring v. Condrell*, 2004 WL 2340047, at *3 (Del. Ch. Oct. 18, 2004). But “[w]hen the parties have filed

² See POB, Dkt. 62; DOB, Dkt. 65; PAB, Dkt. 67; Def. R&M Advisors, LLC’s Reply Br. In Supp. Of Its Mot. For Partial Summ. J., Dkt. 68.

cross motions for summary judgment and have not identified a disputed issue of fact material to the disposition of either motion, then the Court may deem the motions to be a stipulation for decision on the merits based on the record submitted with the motions.” Ct. Ch. R. 56(i); *see also* POB at 9; DOB at 14. Even absent that agreement, “[s]ummary judgment is particularly appropriate in a dispute over an unambiguous contract ‘because there is no need to resolve material disputes of fact.’” *XO Commc’ns, LLC v. Level 3 Commc’ns, Inc.*, 948 A.2d 1111, 1124 (Del. Ch. 2007) (quoting *NBC Universal, Inc. v. Paxson Commc’ns Corp.*, 2005 WL 1038997, at *5 (Del. Ch. Apr. 29, 2005)).

The parties have cross-moved for summary judgment on Counts II, III, and IV of the Complaint and Counts I, II, and III of the Counterclaims. To resolve those claims, the Court must interpret the terms of the Operating Agreement. “Absent ambiguity,” the Court will interpret contract “terms according to their plain and ordinary meaning.” *McKenzie v. BDO USA, P.C.*, 2026 WL 191010, at *3 (Del. Ch. Jan. 26, 2026). “[A] contract is only ambiguous when the provisions in controversy are reasonably or fairly susceptible to different interpretations or may have two or more different meanings.” *Infab Holdco, Inc. v. Cusick*, 2025 WL 1430771, at *2 (Del. Ch. May 19, 2025) (quoting *O’Brien v. Progressive N. Ins. Co.*, 785 A.2d 281, 288 (Del. 2001)).

A. The Parties' Contentions

R&M contends that it is entitled to purchase Blue Fire's interest in PPDP. Blue Fire contends that it is entitled to purchase R&M's interest in PPDP.

Blue Fire argues that R&M's March 10 Letter was a Buy/Sell Offer under Section 9.12 of the Operating Agreement. POB at 16. According to Blue Fire, its April 30 Response accepted R&M's offer to sell R&M's interests at the \$1.3 million offer price, while properly rejecting the Release Terms, which were not permitted under Section 9.12. *Id.* at 21.

R&M, on the other hand, advances two alternative theories to support its position that it is entitled to purchase Blue Fire's interest in PPDP. First, R&M contends that R&M's March 10 Letter was a Buy/Sell Offer under Section 9.12, but Blue Fire's April 30 Response failed to accept its offer to buy or to sell, and instead proposed different terms (by rejecting the Release Terms). DOB at 17–19, 32–33. Section 9.12(b) states that “[i]f the Offeree fails within said sixty (60) day period to accept either of said offers,” then the Offeror may elect “to purchase the Interest of the Offeree, at the applicable price as specified in Section 9.12(a), and if the Offeror exercises such right, the Offeree shall be required to sell.” OA § 9.12(b). According to R&M, R&M's May 13 Reply properly invoked its right under Section 9.12(b) to purchase Blue Fire's interest because Blue Fire failed to accept its offers. DOB at 38–39.

Alternatively, R&M contends that R&M's March 10 Letter was not a Buy/Sell Offer under Section 9.12. *Id.* at 29. In this case, R&M contends that Blue Fire's April 30 Response was a Buy/Sell Offer, and R&M's May 13 Reply accepted Blue Fire's offer to sell its interest in PPDP for \$1.3 million. *Id.* at 39–40.³

All of these theories fail.

B. The Cross-Motions Are Denied.

Counts II, III, and IV of the Complaint and Counts I, II, and III of the Counterclaims all turn on one question: do R&M's March 10 Letter, Blue Fire's April 30 Response, and/or R&M's May 13 Reply impose a binding obligation on either R&M or Blue Fire to sell its respective interest to the other under Section 9.12 of the Operating Agreement? Applying the unambiguous language of Section 9.12, I conclude they do not. R&M's March 10 Letter was not a Buy/Sell Offer under Section 9.12. Blue Fire's April 30 Response did not accept or make a Buy/Sell Offer. And R&M's May 13 Reply could not accept a Buy/Sell Offer that was not made.

³ R&M also argues that it is entitled to purchase Blue Fire's interest in PPDP under the MIPA. DOB at 45–49. In denying R&M's Motion to Stay Discovery, this Court declined to “give effect to an agreement that may not have been reached” “while that dispute is resolved outside of this court.” Dkt. 58. The Court will not revisit that ruling.

1. R&M's March 10 Letter Was Not A Buy/Sell Offer Subject To The Provisions Of Section 9.12.

Both Blue Fire and (in one variation of its arguments) R&M contend that R&M's March 10 Letter was intended as a Buy/Sell Offer under Section 9.12 of the Operating Agreement. But under the unambiguous language of Section 9.12, R&M's March 10 Letter plainly did not constitute a Buy/Sell Offer.

Section 9.12 of the Operating Agreement states that “[n]o offer shall be subject to the provisions of this Section 9.12 unless such offer is both an offer to sell the entire Interest of the Offeror and an offer to purchase the entire Interest of the Offeree.” OA § 9.12(a). This language is unambiguous; if an offer is not “both an offer to sell . . . and an offer to purchase,” then it is not “subject to the provisions of this Section 9.12.” *Id.*

Although R&M's March 10 Letter cites Section 9.12 and refers to a “Notice of Buy/Sell Offer” in its subject line, it does not make an offer to sell R&M's interests to Blue Fire. R&M's March 10 Letter at 1. Rather, the letter states that it “serves as notice of R&M[’s] . . . offer to purchase Blue Fire[’s] . . . entire Percentage Interest in [PPDP].” *Id.* The letter defines R&M as the “Buyer” and Blue Fire as

the “Seller.” *Id.* Nowhere in R&M’s March 10 Letter does R&M offer to sell its interests to Blue Fire.⁴

Although R&M’s March 10 Letter did not make an explicit offer to sell, the parties seem to suggest that by citing Section 9.12, an offer to sell was “implied.” DOB at 29; *see also* POB at 6. This misreads the contract. Section 9.12 does not provide that an offer made thereunder will be construed as an offer to buy and sell; it says an offer that is not “both an offer to sell . . . and an offer to purchase” is not “subject to the provisions of this Section 9.12.” OA § 9.12(a).

Moreover, the Release Terms included in R&M’s March 10 Letter foreclose any “implied” offer to sell. Unlike a price term, Blue Fire could not accept the Release Terms in the inverse. If R&M were the “Seller,” it could not dismiss a lawsuit against itself. And it would be similarly illogical for Blue Fire to maintain the release and dismissal obligations if it were to occupy the shoes of the “Buyer.” As a result, R&M cannot explain what the terms of its “implied” offer to sell would have been.

⁴ R&M concedes that “the March 10 Letter does not follow requirements” outlined in Section 9.12. DOB at 17 (“It does not state that it is an offer either to buy or to sell; instead, it specifies that R&M will be the purchaser.”); *id.* at 29 (“If the Court finds that the March 10 Letter does not meet any of the three requirements, then the letter is not a buy/sell notice under Section 9.12.”).

In the absence of an explicit or implicit offer to sell, R&M's March 10 Letter is not "subject to the provisions of . . . Section 9.12." OA § 9.12(a).

R&M's later conduct suggests that R&M did intend to make a Buy/Sell Offer. For instance, R&M's April 29 Letter stated that "the buy-sell provisions of the PPDP Operating Agreement have been triggered," and R&M's May 13 Reply claimed that Blue Fire "failed to accept either [R&M's] offer to buy [Blue Fire's] entire interest in [PPDP] or R&M's offer to sell its entire interest in PPDP to [Blue Fire]." R&M's April 29 Letter at 2; R&M's May 13 Reply at 1. But applying the unambiguous language of Section 9.12 compels the conclusion that R&M's March 10 Letter is not a Buy/Sell Offer under the Operating Agreement. In other words, R&M failed to accomplish its intent because it did not comply with the plain language of Section 9.12. Neither R&M nor Blue Fire argues that waiver, estoppel, or another legal theory should bind the parties to an incorrect interpretation of Section 9.12 and its effect on R&M's March 10 Letter.⁵

R&M's March 10 Letter was not a Buy/Sell Offer.

⁵ R&M argues that its failure to comply with Section 9.12 was at most an "immaterial breach," but this argument misses the mark. DOB at 18. Neither party is contractually required to deliver a Buy/Sell Offer, so the issue is not one of breach; the offers made simply were not "subject to the provisions of . . . Section 9.12." OA § 9.12(a); *see* R&M's April 29 Letter at 2 ("Notwithstanding the PPDP buy-sell provisions, nothing prohibits negotiation for the purchase or sale of interests in PPDP outside of those buy-sell provisions.").

2. Blue Fire's April 30 Response Did Not Make Or Accept A Buy/Sell Offer.

Blue Fire's April 30 Response purported to accept an offer to sell R&M's interest made in R&M's March 10 Letter. Blue Fire's April 30 Resp. at 1 ("This letter serves as notice of Blue Fire's acceptance of R&M's offer to sell R&M's entire Interest in [PPDP] . . ."). R&M's March 10 Letter was not a Buy/Sell Offer because it did not offer to sell R&M's interests to Blue Fire. Blue Fire's April 30 Response could not accept an offer that was not made; it was instead a rejection and counteroffer proposing new terms. *See Sandcastle Realty, Inc. v. Castagna*, 2006 WL 2521437, at *2 (Del. Ch. Aug. 16, 2006) ("Under our law, a response to an offer that is not on the terms set forth by the offeror constitutes a rejection of the original offer and a counter-offer.").

R&M contends that Blue Fire's April 30 Response was itself a Buy/Sell Offer under Section 9.12. *See* DOB at 37 ("The April 30 Letter invokes Section 9.12, and so it can be understood as a buy/sell offer . . ."). But R&M concedes that Blue Fire's April 30 Response also "does not contain both an offer to buy and an offer to sell"—it only purports to accept an offer to sell R&M's interest. *Id.* at 38. For the same reason R&M's March 10 Letter was not a Buy/Sell Offer—it agrees only to purchase a counterparty's interests—Blue Fire's April 30 Response is not "subject to the provisions of . . . Section 9.12." OA § 9.12(a).

3. R&M's May 13 Reply Could Not Enforce A Buy/Sell Offer That Was Never Made.

R&M's May 13 Reply purported to invoke R&M's right under Section 9.12(b) to purchase Blue Fire's interest based on Blue Fire's failure to accept R&M's offer to buy or sell in its March 10 Letter. R&M's May 13 Reply at 1. Because R&M's March 10 Letter was not a Buy/Sell Offer, it was not "subject to" Section 9.12 and R&M had no right to purchase Blue Fire's interest after Blue Fire's non-acceptance.

Alternatively, R&M contends that its May 13 Reply accepted Blue Fire's offer to sell in Blue Fire's April 30 Response. DOB at 39–40. But Blue Fire's April 30 Response was not a Buy/Sell Offer and agreed only to purchase R&M's interest; R&M could not accept an offer to sell that Blue Fire did not make.

* * *

Neither R&M's March 10 Letter nor Blue Fire's April 30 Response was a Buy/Sell Offer under Section 9.12 of the Operating Agreement, and neither Blue Fire's April 30 Response nor R&M's May 13 Reply could accept an offer that was not made. Neither party is bound to sell its interests to the other.

Counts II, III, and IV of the Complaint are premised on an incorrect interpretation of the Operating Agreement and the parties' correspondence under which R&M is required to sell its interests to Blue Fire. *See* Compl. ¶¶ 78–94. Judgment is entered for R&M on these counts.

Counts I, II, and III of the Counterclaims are premised on an incorrect interpretation of the Operating Agreement and the parties' correspondence under which Blue Fire is required to sell its interests to R&M. *See* Countercls. ¶¶ 21–41. Judgment is entered for Blue Fire on these counts.

Each party seeks an award of fees and costs under Section 11.8 of the Operating Agreement, which awards fees to a “party to this Agreement [who] prevails against any other party hereto in connection with the prevailing party’s enforcement of its rights under this Agreement.” OA § 11.8. Because neither party has prevailed in enforcing its rights under the Operating Agreement, each side must bear its own fees and costs.

III. CONCLUSION

Judgment is entered for R&M on Counts II, III, and IV of the Complaint. Judgment is entered for Blue Fire on Counts I, II, and III of the Counterclaims.