

IN THE COURT OF CHANCERY OF THE STATE OF DELAWARE

M.A.C. JOB FUND I, LLC,	)	
	)	
M.A.C. Job,	)	
	)	C.A. No. 2025-0634 KMM
v.	)	
	)	
VOYAGER TECHNOLOGIES, INC.	)	
(f/k/a VOYAGER SPACE HOLDINGS,	)	
INC.),	)	
	)	
Defendant.	)	

MEMORANDUM OPINION

Date Submitted: July 1, 2026
Date Decided: October 13, 2026

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Miller, J.

Commercial parties are free to order their affairs through contractual arrangements, allocating their risks. When they do so in an unambiguous contract, the court will not construe the contract or imply terms to impose obligations or confer benefits a party did not secure for itself when the contract was negotiated. Such is the case here.

When M.A.C. Job Fund I, LLC (“M.A.C. Job”) entered into an investor agreement with Voyager Technologies, Inc. (“Voyager”), the parties agreed that for the initial period of the contract, Voyager was required to accept certain investments M.A.C. Job secured. When that period ended, Voyager was no longer obligated to accept any investments. M.A.C. Job continued working to secure investors and when Voyager terminated the contract without accepting any, M.A.C. Job initiated this action.

M.A.C. Job’s breach of contract claim fails because the contract does not impose a standard of conduct on Voyager in the second phase of the contract and M.A.C. Job fails to plead any otherwise recoverable damages. And the implied covenant of good faith and fair dealing cannot supply protections for M.A.C. Job for which it did not bargain. Finally, because the parties’ relationship is governed by an enforceable contract, promissory estoppel is not a viable claim. Accordingly, Voyager’s motion to dismiss is granted.

I. BACKGROUND¹

A. The Investor Agreement

M.A.C. Job is a single-purpose entity wholly owned by Far Capital Partners LLC (“Far Cap”), which raises and invests funds by soliciting investors who qualify for EB-5 investment opportunities.² The EB-5 program allows foreign investors to “apply for lawful permanent residence (become a Green Card holder),” if they invest in commercial enterprises approved by the United States Immigration Services (“USCIS”).³

In May 2024, M.A.C. Job entered into an Investor Agreement with Voyager, in connection with its Starlab Space Station project (the “Project”).⁴ Under the Investor Agreement, M.A.C. Job was tasked with raising funds by soliciting EB-5 investors (“EB-5 Investors”) through a private placement memorandum.⁵ M.A.C.

¹ The facts are derived from the Amended Complaint, D.I. 13. (“Am. Compl.”), and the documents it incorporates by reference.

² Am. Compl. ¶¶ 7, 12.

³ *Id.* n.2 (citing *EB-5 Immigrant Investor Program*, U.S. Citizenship & Immigr. Servs., <https://www.uscis.gov/working-in-the-united-states/permanent-workers/eb-5-immigrant-investor-program>).

⁴ Am. Compl., Ex. 1. “The Project involves the development, construction, and operation of certain terrestrial and/or space infrastructure and technology associated with Starlab Space, LLC, the first continuously crewed, free-flying commercial space station to serve NASA and space agencies globally.” Am. Compl. ¶ 15.

⁵ Am. Compl. ¶¶ 30-31.

Job would use the funds raised to purchase Class C Preferred Shares (“Shares”) in Voyager.⁶

Under Section 7 of the Investor Agreement, M.A.C. Job “shall have” the right to market the investment and purchase Shares “until the close of the Marketing Window.”⁷ The “Marketing Window” closed as “the soonest to occur of the following: (i) six (6) months after the filing of the I-956F for Starlab Phase 1; (ii) the complete subscription and funding of the Offering; and (iii) any other permitted termination of the Offering.”⁸ Voyager was obligated to accept all EB-5 investments “actually received in the Escrow Account from qualified EB-5 Investors during the Marketing Window in exchange for the issuance” of Shares to M.A.C. Job.⁹ The parties agree that the six-month Marketing Window, satisfying section (i), ended on November 22, 2024.

Section 9 set forth the termination events. The Investor Agreement terminated immediately before “the earliest to occur of the following ... (a) the consummation of a Qualifying Public Offering by [Voyager]; and (b) [Voyager’s] completion of a

⁶ *Id.* If an EB-5 investment was accepted and Shares were issued but the USCIS later denied an EB-5 Investor’s petition, Voyager was required to “use commercially reasonable efforts to repurchase the portion of” the shares corresponding to that investor. Investor Agreement § 4.

⁷ Am. Compl., Ex. 1, § 4.

⁸ *Id.*

⁹ *Id.*

Fundamental Change.¹⁰ The parties agree that Voyager closed its initial public offering (“IPO”) on June 12, 2024, which would have permitted termination under section (a).

Finally, in Section 10 the parties agreed that the Investor Agreement “may be amended, modified, or supplemented only by an agreement in writing signed by each party hereto.”¹¹

B. M.A.C. Job obtains committed investors and deposits into the Escrow Account

At the time the Investor Agreement was executed, the parties understood that the fundraising would likely not be completed within six months because USCIS approval of a project and EB-5 investors’ petitions typically takes 18-24 months.¹² The parties agreed that an extension was likely needed due to the novelty of the Project’s structure.¹³ The parties also understood and agreed that the EB-5 offerings had to be completed before the close of a Qualifying Public Offering (the IPO). While an exact time period was not identified, Voyager “repeatedly told” M.A.C. Job that an IPO would not occur before the fourth quarter of 2025.¹⁴

¹⁰ *Id.*, § 9.

¹¹ *Id.*, § 10.

¹² Am. Compl. ¶¶ 36, 39-41.

¹³ *Id.*

¹⁴ *Id.* ¶ 38.

After execution of the Investor Agreement, the parties worked together and obtained expedited USCIS approval of the Project.¹⁵ But, Voyager enacted a series of policies that undermined M.A.C. Job’s ability to obtain investors and the parties “understood these policies would require more time to obtain” EB-5 Investors.¹⁶

The parties held weekly planning meetings, during which the EB-5 investment program was “an ongoing priority.”¹⁷ Voyager’s President emailed both party’s teams stating that the EB-5 program was “Voyagers [*sic*] #1 priority.”¹⁸ These weekly meetings and calls continued through to February 17, 2025.¹⁹

The marketing efforts paid off. On December 8, 2024, M.A.C. Job informed Voyager that 22 investors committed a total of \$17.6 million.²⁰ The first wire was received in the Escrow Account on January 28, 2025.²¹ The second wire was received in the Escrow Account on February 3, 2025, bringing the total amount to \$1.45 million.²²

¹⁵ *Id.* ¶¶ 40-41.

¹⁶ *Id.* ¶ 44.

¹⁷ *Id.* ¶¶ 47-50.

¹⁸ *Id.* ¶¶ 50-52.

¹⁹ *Id.* ¶¶ 51-52.

²⁰ Am. Compl., ¶ 53, Ex. 6.

²¹ *Id.*, Ex. 7

²² *Id.*, Ex. 10.

The first EB-5 Investor petition was filed with the USCIS on February 10, 2025 and the parties worked together to advocate for expedited treatment of the petition.²³ By February 16, M.A.C. Job reported having 33 committed investors.²⁴

C. Post-November 22 activities

Voyager “consistently and repeatedly emphasized” its commitment to the EB-5 program.²⁵ In October 2024, Voyager approved \$250,000 for marketing events in 2025, which were paid to M.A.C. Job in two payments—on December 16, 2024 and February 14, 2025.²⁶ Throughout November 2024, Voyager was involved in the design of marketing materials for the January 2025 EB5 Investor Magazine (a leading industry publication) event and co-authored the December 18, 2024 cover story for the magazine, in which Voyager’s president reaffirmed his commitment to the EB-5 program.²⁷ On November 30, 2024, Voyager’s president asked M.A.C. Job for the estimate of EB-5 funds that could be expected in 2025.²⁸

Similar activities continued in December 2024 and January 2025, including Voyager promising to send M.A.C. Job press releases so it could “send them to their

²³ *Id.* ¶ 53(e).

²⁴ *Id.* ¶ 51(c).

²⁵ *Id.* ¶ 54.

²⁶ *Id.* ¶ 54(a).

²⁷ *Id.*, ¶ 54, Ex. 14-17, 22-29.

²⁸ *Id.* ¶ 54(g).

investor pipeline to get them excited and help drive the investors to close”²⁹ and co-hosting the Newport EB-5 event, where Voyager executives headlined a panel before hundreds of EB-5 agents and attorneys, to attract top-tier promotional partners and investors.³⁰

On December 4, 2024, Voyager’s president and M.A.C. Job’s principal exchanged messages in which M.A.C. Job’s principal stated that he had sold a portion of his interest in Far Cap to continue funding the efforts, and Voyager’s president replied, “We are all in as well. We will get this done.”³¹

On December 29, 2024, Voyager sent M.A.C. Job a voice message discussing the politics surrounding the EB-5 program, and stating “We are still moving forward [with the EB-5 investment] one way or the other...”³²

Voyager’s IPO was reported in the Wall Street Journal on January 21, 2025,³³ and M.A.C. Job learned of it the next day.³⁴

²⁹ *Id.*, ¶ 54(i), Ex. 20.

³⁰ *Id.*, ¶ 54(u), Ex. 32.

³¹ *Id.*, ¶ 54, Ex. 21. *See also, id.* ¶ 54(n) (Voyager jointly hosting a private dinner with M.A.C. Job for international agents and attorneys in the EB-5 space); ¶ 54(o) (participating in a December 15 investor call); (v) (in January, Voyager agreeing to split USCIS filing fees); ¶ 54(x) (committing to promote the Project during Voyager’s planned visit to Dubai); and ¶ 54(z) (participating in a January 30, 2025 call with M.A.C. Job and a potential investor).

³² *Id.* ¶ 54(s).

³³ *Id.* ¶ 65.

³⁴ *Id.* ¶ 54(w).

In February, the parties discussed marketing the Project and the IPO. On February 10, 2025, M.A.C. Job notified Voyager that the first EB-5 Investor filed an USCIS petition, a second investor planned to file later that week, and \$1.45 million could soon be released from the Escrow Account “so we should update/finalize all of the closing documents in the next week or so.”³⁵ M.A.C. Job also wrote:

Unfortunately, the 6-month “Marketing Window” in the Investor Agreement expired in November. Obviously, we have all continued to market the project as a team and in good faith, but we need to extend the Marketing Window for some period of time. . . .

I recognize that extending the Marketing Window could be complicated in the context of the IPO, but we need some period of time to close out investors in the queue and/or allow us to continue marketing the project.³⁶

Voyager responded: “circling back with Latham [& Watkins]³⁷ on coordinating with IPO timing, we’ll get this papered and done ASAP.”³⁸

On February 11, Voyager again confirmed its commitment, stating that: “[W]e are firmly committed to get[ting] this done,” and indicated it was working with Latham & Watkins on the permissible timeframe for pre-IPO fundraising.³⁹

³⁵ Am. Compl., Ex. 37.

³⁶ *Id.*

³⁷ Voyager’s outside counsel.

³⁸ Am. Compl., Ex. 38.

³⁹ Am. Compl. ¶ 54(ee).

M.A.C. Job checked in again on February 12, writing: “I know you guys are working on a timeline with Latham, and I know it is complicated, but please [let me know] when you can so I can sleep at night.”⁴⁰

By February 12, the parties were discussing a possible new structure. M.A.C. Job wrote to Voyager: “Following up on our conversation earlier today, we are excited to move forward with Phase II of Starlab EB-5 pending the IPO timing, etc. Here are some initial thoughts and considerations regarding the Phase II structure as a ‘mezzanine’ loan at the Starlab JV level.”⁴¹ The email goes on to describe the loan transactions and the costs of Phase I, followed by: “As a company, we do need to make money, but we can be creative in how we do that, especially if Phase I is successful in the near term.”⁴² Voyager responded on February 13, stating: “Thanks for your patience! I’ve been working with Latham on balancing how much more time we can buy on this against our compliance risks.”⁴³ Voyager then posed a series of questions to M.A.C. Job:

How many investors have signed subscription documents?
How many investors have filed their I526 petitions?
How many of those have received notifications of receipt?
What is status of the Investment Advisor application for FarCap [*sic*]?
Can we get a copy of the signed agreement with [the broker dealer]?

⁴⁰ Am. Compl., Ex. 41.

⁴¹ *Id.*, Ex. 40.

⁴² *Id.*

⁴³ *Id.*, Ex. 43.

How involved have they been and how are you splitting the Admin Fee?⁴⁴

M.A.C. Job provided detailed responses and Voyager responded: “Thanks, ... this is very helpful. We are reviewing and will be back to you soon.”⁴⁵

Also on February 13, 2025, M.A.C. Job informed Voyager that approximately 30 investors were committed and updated that figure to 33 investors just days later.⁴⁶

D. Voyager terminates the Investor Agreement.

On February 17, 2025, Voyager notified M.A.C. Job that Voyager was terminating the Investor Agreement, claiming that the Marketing Window had expired and that M.A.C. Job had failed to satisfy the “threshold requirement.”⁴⁷ Voyager did not accept any EB-5 investments and did not issue any Shares to M.A.C. Job. This action followed.

II. ANALYSIS

On a motion to dismiss pursuant to Court of Chancery Rule 12(b)(6), the governing pleading standard is reasonable conceivability. Accordingly, the court must “deny the motion unless the plaintiff could not recover under any reasonably conceivable set of circumstances.”⁴⁸ At the pleading stage, the court accepts all

⁴⁴ *Id.*

⁴⁵ *Id.*

⁴⁶ *Id.* ¶¶ 54, (mm), (oo).

⁴⁷ *Id.* ¶ 56. M.A.C. Job alleges that there was no “threshold requirement” in the agreement. ¶ 37.

⁴⁸ *Cent. Mortg. Co. v. Morgan Stanley Mortg. Capital Holdings LLC*, 27 A.2d 531, 536 (Del. 2011).

well-pleaded factual allegations as true and draws all reasonable inferences in favor of the non-moving party.⁴⁹ The court, however, does not accept conclusory allegations that lack supporting factual allegations.⁵⁰

A. Breach of Contract – Count I

The elements of a breach of contract claim are well settled. A plaintiff must allege: ““(i) a contractual obligation, (ii) a breach of that obligation by the defendant, and (iii) a causally related injury that warrants a remedy, such as damages or in an appropriate case, specific performance.””⁵¹

“Under Delaware law, ‘[w]hen interpreting a contract, the role of a court is to effectuate the parties’ intent.’”⁵² “Unless there is ambiguity, Delaware courts interpret contract terms according to their plain, ordinary meaning.”⁵³ “Delaware law adheres to the objective theory of contracts, *i.e.*, a contract’s construction should be that which would be understood by an objective, reasonable third party.”⁵⁴

⁴⁹ *In re Gen. Motors (Hughes) S’holder Litig.*, 897 A.2d 162, 168 (Del. 2006).

⁵⁰ *Id.*

⁵¹ *World Energy LLC v. Air Products and Chemicals, Inc.*, 2026 WL 1948840, at *6 (Del. Ch. July 6, 2026) (quoting *AB Stable VIII LLC v. MAPS Hotels & Resorts One LLC*, 2020 WL 7024929, at *47 (Del. Ch. Nov. 30, 2020), *aff’d*, 268 A.3d 198 (Del. 2021)).

⁵² *Kentucky Downs Mgt., Inc. v. Kentucky Downs, LLC*, 2026 WL 2350870, at *12 (Del. Ch. Aug. 13, 2026) (quoting *Lorillard Tobacco Co. v. Am. Legacy Found.*, 903 A.2d 728, 739 (Del. 2006)).

⁵³ *Alta Berkeley IV C.V. v. Omnoen, Inc.*, 41 A.3d 381, 385 (Del. 2012).

⁵⁴ *Salamone v. Gorman*, 106 A.3d 354, 385-86 (Del. 2014) (citation omitted).

“Delaware is a contractarian state that holds parties’ freedom of contract in high regard.”⁵⁵ “When parties have ordered their affairs voluntarily through a binding contract, Delaware law is strongly inclined to respect their agreement, and will only interfere upon a strong showing that dishonoring the contract is required to vindicate a public policy interest even stronger than freedom of contract.”⁵⁶ The court “will not destroy or twist policy language under the guise of construing it.”⁵⁷ Focusing on the language agreed to by the parties “best promotes ‘parties’ ability to negotiate and shape commercial agreements,’ in keeping with the goal of Delaware law to ‘ensure freedom of contract and promote clarity in the law [and thus] facilitate commerce.’”⁵⁸

M.A.C. Job makes three arguments in support of its contract claim. Each is addressed in turn.

1. Does the Investor Agreement require Voyager to exercise discretion in good faith?

M.A.C. Job’s first theory is that while Voyager was obligated to accept all EB-5 Investors’ funds in the Escrow Account during the Marketing Window, after the window closed, Voyager had an “obligation to exercise good faith discretion in

⁵⁵ *Sunder Energy, LLC v. Jackson*, 332 A.3d 472, 487 (Del. 2024).

⁵⁶ *Salamone*, 106 A.3d at 370 (citation omitted).

⁵⁷ *Rhone-Poulenc Basic Chems. Co. v. Am. Motorists Ins. Co.*, 616 A. 1192, 1195 (Del. 1992) (citation omitted).

⁵⁸ *Salamone*, 106 A.3d at 370 (citation omitted).

determining whether to accept” the investments.⁵⁹ M.A.C. Job asserts that Voyager failed to even consider the investments in the account after the Marketing Window closed, thereby breaching the contract.

Voyager counters that there is no contractual good faith obligation and therefore, M.A.C. Job’s first theory fails.⁶⁰

M.A.C. Job’s contractual breach argument is premised on Voyager exercising discretion to not accept investment funds after the Marketing Window closed, which M.A.C. Job says must be measured by some standard. M.A.C. Job agrees that the Investor Agreement does not contain any such standard. But it suggests that the standard can (and should) be determined later by the Court, as it presents a factual issue.⁶¹ M.A.C. Job relies on *Houseman v. Sagerman*.⁶²

Houseman construed a stockholders’ representative’s duties to the stockholders. The court found that a stockholders’ representative, “as attorney-in-fact for the selling stockholders, generally assumes the obligations of a fiduciary.”⁶³ Those duties were modified by contract, which granted the representative authority

⁵⁹ Plaintiff’s Answering Brief in Opposition to Defendant’s Motion to Dismiss the Amended Complaint (“AB”), at 16 (D.I. 22).

⁶⁰ Defendant’s Reply Brief in Support of Defendant’s Voyager Technologies’ Motion to Dismiss the Amended Complaint, at 9-10 (D.I. 25).

⁶¹ July 1, 2026 Hearing Transcript (“Tr.”), p. 30 (D.I. 38).

⁶² *Houseman v. Sagerman*, 2021 WL 3047165 (Del. Ch. July 2021).

⁶³ *Id.* at *6.

to take actions that he “in [his] *sole and absolute discretion*, may consider necessary, proper or convenient in connection with or to carry out the activities” contemplated by the agreement.⁶⁴ The court found that this equated with a “duty of subjective good faith.”⁶⁵

In contrast to *Houseman*, the Investor Agreement does not set a standard of conduct for not accepting investments after the Marketing Window closed. When the parties desired to set a standard, they did so. For example, in Section 4, when an EB-5 petition is denied, Voyager was obligated to “use commercially reasonable efforts” to repurchase the portion of issued Shares corresponding to the denied investor.⁶⁶ The Court cannot twist the Investor Agreement under the guise of interpreting it to imply a term that M.A.C. Job did not secure for itself at the bargaining table. The Court finds that there is no contractual standard for the exercise of Voyager’s discretion and there is no basis for the Court to set such a standard.

⁶⁴ *Id.* (emphasis added).

⁶⁵ *Id.*

⁶⁶ Investor Agreement § 4; *see also* § 5 (requiring Voyager to “use its commercially reasonable efforts” to create jobs and provide documentation for the EB-5 Investors).

2. Does the Amended Complaint sufficiently allege the Investor Agreement was amended to extend the Marketing Window?

Second, in the alternative, M.A.C. Job argues that the Marketing Window was extended by agreement of the parties, as evidenced by their course of conduct. M.A.C. Job argues that it has alleged sufficient facts to plead that there was a meeting of the minds to extend the mandatory acceptance period in Section 7.

Voyager argues that because the Investor Agreement may only be amended by a signed writing, (which is not alleged to have occurred) this theory fails. It further argues that the Amended Complaint fails to allege facts that an agreement to amend was reached.

Section 10 of the Investor Agreement provides that it “may be amended ... only by an agreement in writing signed by each party”⁶⁷ But, just like any other provision of a written contract, such a provision may be waived or amended orally or by course of conduct.⁶⁸ Because of “Delaware law’s aversion to oral modifications of written agreements,” however, the party asserting such a modification is subject to a heightened evidentiary standard.⁶⁹ The party claiming a written agreement was amended orally or by conduct must establish its claim with

⁶⁷ Investor Agreement § 10.

⁶⁸ *Continental Ins. Co. v. Rutledge & Co., Inc.*, 750 A.2d 1219, 1229 (Del. Ch. 2000) (noting that anti-oral modification clauses can be waived through oral agreements or a course of conduct).

⁶⁹ *Id.* at 1230.

“specificity and directness,” leaving “no doubt of the intention of the parties” to change their agreement which was “previously solemnized by [a] formal document.”⁷⁰

At this stage, the Court is not weighing whether M.A.C. Job has met the heightened evidentiary standard, but whether it has sufficiently pled that the Investor Agreement was amended by conduct. The question is whether M.A.C. Job sufficiently pled that the parties extended the Marketing Window to *require* Voyager to accept the investments in the Escrow Account.

M.A.C. Job pleads that the parties continued to market the Project after November 22, 2024: in November Voyager asked for an estimate of the expected 2025 EB-5 investments; in December 2024, the parties worked on the EB5IM magazine article, which was published that month; Voyager continued to communicate with M.A.C. Job regarding marketing efforts and costs, and co-hosting a private dinner; Voyager tracked governmental developments, participated in investor calls, and worked on materials for upcoming conferences; and in January 2025, Voyager attended and participated in an EB-5 industry conference, agreed to split filing fees, and continued to engage regarding potential EB-5 Investors. In none

⁷⁰ *Id.* (citing *Reeder v. Sanford School, Inc.*, 397 A.2d 139, 141 (Del. 1979)); *see also Eureka VIII LLC v. Niagara Falls Hldgs. LLC*, 899 A.2d 95, 10910 (Del. Ch. 2006) (noting a plaintiff must prove an oral modification to a written contract by clear and convincing proof).

of these communications, however, did the parties discuss extending the mandatory acceptance Marketing Window.

In February 2025, M.A.C. Job acknowledged that the Marketing Window closed in November but it also recognized that extending the period “could be complicated in the context of the IPO.” None of the communications thereafter suggest an agreement was reached. At best, the communications suggest the parties were attempting to find a way to complete the transactions in light of the IPO.

While it is clear that Voyager and M.A.C. Job continued to market the Project after the Marketing Window closed and Voyager remained very interested in the EB-5 investments, based on the allegations in the Amended Complaint, it is not reasonably conceivable that the parties agreed to extend the mandatory purchase period.

3. Does the Amended Complaint sufficiently allege damages from early termination of the Investor Agreement?

Finally, M.A.C. Job alleges that Voyager breached the contract by terminating it in February, as neither ground for termination in Section 9 was satisfied. Voyager counters that M.A.C. Job fails to allege any damages arising from this breach, and thus, this theory of recovery fails as well.

M.A.C. Job sufficiently alleges Voyager terminated the Investor Agreement in violation of Section 9, as the IPO had not closed and no Fundamental Change had

occurred, thereby breaching the contract.⁷¹ M.A.C. Job argues that had Voyager not improperly terminated the contract, there would have been more time for EB-5 Investors to complete their investments and have their petitions approved. M.A.C. Job seeks to recover \$2 million in out-of-pocket expenses, lost fees, and lost profits.⁷²

These damages, however, flow from Voyager failing to accept the EB-5 investments, not termination of the agreement in February. Whether the contract terminated in February or June (when the IPO closed), if Voyager did not accept the EB-5 Investors' funds, M.A.C. Job would not have recovered its expenses or fees or earned a profit. Thus, the damages alleged do not arise from the early termination and this theory of recovery also fails.

B. Implied Covenant of Good Faith and Fair Dealing – Count III

M.A.C. Job again argues that Voyager failed to properly exercise its discretion, this time through the lens of the implied covenant of good faith and fair dealing. M.A.C. Job's theory is as follows: The purpose of the Investor Agreement was to allow M.A.C. Job to use the EB-5 Investors' funds to purchase Shares. To fulfill that purpose, the agreement called for marketing efforts to promote the EB-5

⁷¹ Voyager does not challenge these allegations.

⁷² Am. Compl. ¶ 80.

program, but the Investor Agreement did not terminate after the mandatory acceptance period (the Marketing Window). In the post-Marketing Window period of the contract, Voyager had the implied obligation to exercise its discretion in good faith. Voyager “act[ed] in bad faith and refuse[d] to accept [the EB-5 investments] collected and terminate[d] the [Investor] Agreement without a Termination event because” the agreement “was no longer profitable in light of the IPO.”⁷³

The implied covenant of good faith and fair dealing “‘attaches to every contract.’”⁷⁴ Viewed from the time of contracting, the covenant “ensures that neither party acts arbitrarily or unreasonably to frustrate the fruits of their bargain.”⁷⁵ As used in the implied covenant, “good faith” does not mean “loyalty to the contractual counterparty, but rather faithfulness to the scope, purpose, and terms of the parties’ contract.”⁷⁶ “Fair dealing” does not mean “fair process” akin to an entire fairness analysis, but rather, that the party acted “consistently with the terms of the

⁷³ AB at 32. *See also* Am. Compl. ¶¶ 93-94 (alleging Voyager terminated the agreement after recognizing it “was no longer profitable”).

⁷⁴ *Johnson & Johnson v. Fortis Advisors LLC*, 352 A.3d 229, 253 (Del. 2026) (the court may only imply terms “‘where obligations can be understood from the text of a written agreement but have nevertheless been omitted in the literal sense,’ and only to protect the ‘reasonable expectations’ that the parties shared at signing.”).

⁷⁵ *Id.* (citing *Dunlap v. State Farm Fire & Cas. Co.*, 878 A.2d 434, 442 (Del. 2005)); *Miller v. HCP & Co.*, 2018 WL 656378, at *9 (Del. Ch. Feb 1, 2018), *aff’d sub nom. Miller v. HCP Trumpet Investments, LLC*, 194 A.3d 908 (Del. 2018); *Ryan v. Buckeye P’rns, L.P.*, 2022 WL 389827, at *7 (Del. Ch. Feb. 9, 2022) *aff’d* 285 A.3d 459 (Del. 2022).

⁷⁶ *Gerber v. Enter. Prods. Holdings, LLC*, 67 A.3d 400, 419 (Del. 2013).

parties' agreement and its purpose.”⁷⁷ The implied covenant is to be “surgically” applied and cannot be used to “rewrite the contract to appease a party who later wishes to rewrite a contract [it] now believes to have been a bad deal.”⁷⁸ “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.”⁷⁹ “[H]indsight cannot correct oversight.”⁸⁰

The implied covenant of good faith and fair dealing applies in two primary circumstances. The first is when “unforeseen developments—contingencies neither anticipated nor resolved by the contract—that threaten the parties’ bargained-for economic expectations” arise.⁸¹

The second is “when a contract allocates discretionary authority to one party over a central aspect of the contract.”⁸² The implied covenant requires that such discretionary authority be exercised reasonably and in good faith.⁸³ When the party with discretion exploits it “in a manner that defeats the ‘overarching purpose’ of the bargain, courts may imply a requirement that such discretion be exercised reasonably

⁷⁷ *Id.* at 418-19.

⁷⁸ *Johnson & Johnson*, 352 A.3d at 253 (quoting *Nemec v. Shrader*, 991 A.2d 1120, 1126 (Del. 2010) (“Parties have a right to enter into good and bad contracts, the law enforces both.”)).

⁷⁹ *Nemec*, 991 A.2d at 1128.

⁸⁰ *Johnson & Johnson*, 352 A.3d at 255.

⁸¹ *Id.*

⁸² *Id.* at 253.

⁸³ *Id.* at 254 n.116 (collecting cases).

and in good faith to ensure that the discretionary power is applied consistently with what reasonable parties would have agreed to at signing.”⁸⁴

M.A.C. Job relies on the second ground. The Amended Complaint shows that M.A.C. Job continued to work on the Project and Voyager continued to express its commitment and enthusiasm for the EB-5 investments after the window closed. But the parties allocated their risks in the Investor Agreement. In the post-Marketing Window period, M.A.C. Job’s risk was that Voyager would not accept the EB-5 investments. Voyager had no obligation under the implied covenant to exercise its discretion relating to the EB-5 investments in a manner that benefited M.A.C. Job. Stated differently, the implied covenant did not prevent Voyager choosing the more economically advantageous IPO over accepting EB-5 investments, even if its decision was based on “greed.”⁸⁵ The parties ordered their affairs in such a manner that M.A.C. Job was allocated the risk that Voyager would not accept the EB-5 investments. Voyager’s actions were not contrary to, and did not frustrate, the scope, purpose, or terms of the parties’ agreement. M.A.C. Job cannot rely on the implied covenant to secure a right for itself that it did not obtain at the bargaining table.⁸⁶

⁸⁴ *Id.* at 253.

⁸⁵ Tr. at 33 (arguing that Voyager acted arbitrarily due to its greed). *See Winshall v. Viacom Intern., Inc.*, 55 A.3d 629, 636-37 (Del. Ch. 2011) (purchase had no implied obligation to exercise its discretion in a manner that benefited the selling stockholders).

⁸⁶ *Winshall*, 55 A.3d at 636-37.

Even viewing the facts in a light most favorable to M.A.C. Job, it is not reasonably conceivable that Voyager had an implied duty to accept the EB-5 investments in the post-Marketing Window period.

C. Promissory Estoppel – Count II

“‘[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.’”⁸⁷ A plaintiff must allege that:

(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.⁸⁸

Promissory estoppel, however, is inapplicable “‘where a fully integrated, enforceable contract governs the promise at issue.’”⁸⁹

M.A.C. Job pled promissory estoppel in the alternative to its breach of contract claim when it was unclear whether Voyager contended that the contract

⁸⁷ *MERA USA LLC v. MCS Burbank LLC*, 2026 WL 2547077, at *19 (Del. Ch. Aug. 28, 2026) (quoting *Ramone v. Lang*, 2006 WL 905347, at *14 (Del. Ch. Apr. 3, 2006)).

⁸⁸ *Id.* (quoting *Grunstein v. Silva*, 2009 WL 4698541, at *7 (Del. Ch. Dec. 8, 2009)) (citations omitted).

⁸⁹ *Id.* (quoting *SIGA Technologies, Inc. v. PharmAthene, Inc.*, 67 A.3d 330, 348 (Del. 2013)).

terminated when the Marketing Window closed. If such were the case, then M.A.C. Job would rely on promissory estoppel to recover in the post-Marketing Window period. During briefing on the motion to dismiss, Voyager clarified that it agreed that the Investor Agreement did not terminate at the close of the Marketing Window. Because the post-Marketing Window period is governed by an enforceable contract, the promissory estoppel claim cannot survive, as M.A.C. Job acknowledged at oral argument. This claim, thus, also fails.

III. CONCLUSION

For these reasons, Voyager's motion dismiss is granted and the complaint is dismissed in its entirety, with prejudice.