IN THE COURT OF CHANCERY OF THE STATE OF DELAWARE

FABIAN SCHMAHL,	)	
	)	
Plaintiff,	)	
	)	
v.	)	C.A. No. 2025-1383-KHL
	)	
LFM CAPITAL PARTNERS III-A, L.P., LFM CAPITAL PARTNERS III GP, LLC, ACCELEVATION HOLDINGS BLOCKER, LLC, DANIEL SHOCKLEY, STEPHEN COOK, JOHN JEFFREY, CHRISTOPHER LIN, MICHAEL RUBIERA, FOR THE TABLE, LLC, and CHARLES MCKENRICK,	)	
	)	
Defendants.	)	

MEMORANDUM OPINION

Date Submitted: October 26, 2026

Date Decided: November 25, 2026

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LACHMUND, V.C.

In 2022, plaintiff Fabian Schmahl invested in Accelevation LLC and became the company's next chief operating officer. Upon investing, he signed a joinder to Accelevation's operating agreement (the "Accelevation Operating Agreement"). Shortly after Schmahl invested, a majority of Accelevation's members agreed to sell their membership interests to affiliates of LFM Capital Partners ("LFM"), a private equity firm. The sale triggered a drag-along provision in the Accelevation Operating Agreeement (the "Drag-Along Provision"), which compelled Schmahl to also sell his newly acquired Accelevation units.

In the transaction that followed, Schmahl exchanged a portion of his Accelevation units for rollover equity in Accelevation Holding Company, LLC ("Holding"), a newly formed holding company controlled by LFM. Schmahl signed a Rollover Agreement that gave Holding the right to repurchase Schmahl's equity in Holding at fair market value if Accelevation terminated Schmahl's employment with or without cause.

Within weeks of the sale closing, Accelevation terminated Schmahl. A few months after Schmahl's termination, Holding exercised its right under the Rollover Agreement to repurchase Schmahl's Holding units. Schmahl did not contest the repurchase at that time. It was only three years later, after Accelevation was sold in a lucrative third-party transaction, that Schmahl filed this lawsuit claiming that the repurchase was the product of a "scheme" to deprive him of his equity in Holding.

Schmahl concedes that the drag-along sale of his Accelevation units and the subsequent repurchase of his Holding units complied with the terms of the Drag-

Along Provision and the Rollover Agreement, respectively. Schmahl instead tries to plead that these transactions amounted to a breach of fiduciary duty. Schmahl also alleges that the transactions breached the implied covenant of good faith and fair dealing. These theories fail to state a claim on which relief can be granted.

Schmahl's breach of fiduciary duty claim fails at multiple levels. It fails at the threshold because, under controlling Delaware Supreme Court precedent, the parties' contracts preempt a fiduciary-breach claim predicated on the defendants' exercise of their contractual rights. Even if contractual preemption did not apply, the claim would fail because Holding's operating agreement (the "Holding Operating Agreement") includes a waiver of claims for breach of fiduciary duty. And even if neither contractual preemption nor waiver barred Schmahl's claim, the claim would still fail because the amended complaint does not allege facts supporting a reasonable inference that the defendants engaged in a self-interested or bad-faith conspiracy to harm Schmahl's interests.

Schmahl's implied covenant claim fails because the parties' contracts address the conduct at issue. The Rollover Agreement gave Holding the absolute right to repurchase Schmahl's units for fair market value upon his termination. There is no gap for the implied covenant to fill.

Schmahl may regret the contracts that he agreed to. "Parties have a right to enter into good and bad contracts, the law enforces both."[1] And Delaware law does

[1] *Nemec v. Shrader*, 991 A.2d 1120, 1126 (Del. 2010).

not permit parties to circumvent unambiguous contracts through attenuated fiduciary-breach or implied-covenant claims. The motion to dismiss is granted.

I. FACTUAL BACKGROUND

The following facts are drawn from the allegations of the amended complaint and the documents it attaches as exhibits and incorporates by reference.[2]

A. Schmahl Joins Accelevation Amid a Potential Sale.

Accelevation is a vertically integrated manufacturing company serving the data center, electric field, and robotic markets. Defendant Michael Rubiera formed Accelevation and served as its CEO.[3] Defendant Charles McKenrick was Accelevation's chief financial officer. Rubiera held a membership interest in Accelevation directly, and McKenrick held a membership interest through defendant For the Table, LLC ("FTT").[4] Rubiera and FTT together controlled a majority of Accelevation's units.

In January 2022, Schmahl and Rubiera began discussing Schmahl investing in Accelevation and becoming its chief operating officer. After several meetings with the company's executive team, Schmahl accepted the position.

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[2] Numerical exhibits cited herein are those enclosed with the Verified Amended Complaint (Dkt. 23). Alphabetical exhibits cited herein are those enclosed with Defendants' Opening Brief in Support of Their Motion to Dismiss Plaintiff's Amended Complaint (Dkt. 27). The plaintiff's answering brief (Dkt. 31) is cited as "Ans. Br."

[3] Accelevation was originally formed as an Ohio limited liability company before later converting to a Delaware limited liability company.

[4] Another Accelevation employee was also a member of FTT.

Shortly after Schmahl came on board, Accelevation began discussions with LFM about a potential acquisition. On June 3, 2022, LFM submitted a confidential letter of intent. LFM proposed a transaction that would result in it owning a majority of the equity in the go-forward company, with Accelevation's management team owning a minority of the equity through a rollover of their existing equity.

Schmahl learned of LFM's proposal shortly after Accelevation received it. Schmahl offered to support the due diligence process, but Rubiera did not want him involved. Schmahl participated in a management presentation to LFM and a subsequent plant tour. Rubiera later informed Schmahl that the LFM team "did not like his body language during the meeting." Schmahl was then excluded from all discussions with LFM.

Schmahl's investment in Accelevation had not yet been finalized when the company began discussions with LFM. Schmahl had contemplated investing through Your Fearless Partners, LLC ("YFP"), an entity controlled by an outside investor who was a longtime associate of Schmahl. LFM and Rubiera, however, insisted that Schmahl hold Accelevation units directly if he wanted to roll over his equity in the forthcoming sale. Rubiera later explained to Schmahl that this was because LFM would not allow owners of Accelevation who were not actively involved in the company's business (like YFP's controller) to receive rollover equity in the transaction.

On July 16, 2022, Schmahl purchased 136.5 Accelevation units from YFP, representing a 5.61% equity interest in the company. Schmahl signed a joinder

agreement binding him to the Accelevation Operating Agreement. Section 2.9 of the Accelevation Operating Agreement is the Drag-Along Provision. It provides, in summary, that if members owning a majority of Accelevation's membership interests want to sell their membership interests, the majority can compel the minority holders to sell their membership interests on the same terms and conditions. The Drag-Along Provision obligated the minority members to "execute any and all documents that may be reasonably necessary to accomplish the Drag Sale."[5]

The next day, on July 17, 2022, Rubiera and FTT provided notice to Accelevation's members of their exercise of the Drag-Along Provision. The notice informed the members that holders of a majority of the company's membership interests "have elected to sell their Interests to LFM Capital Partners III-A/B, or one of its affiliates" and that the minority members were "required to consent" to the sale of their own units pursuant to the Drag-Along Provision.[6]

B. The Sale Closes, and Schmahl Rolls Over Most of His Units.

On August 9, 2022, LFM, through Holding, acquired Accelevation's membership interests for a base purchase price of $57 million.[7] Prior to the purchase, Holding was wholly owned by LFM through two affiliates: defendant LFM Capital

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[5] Ex. C § 2.9.

[6] Ex. 3.

[7] The price was adjusted downward to approximately $34 million after taking into account selling expenses, closing indebtedness, phantom-unit proceeds, and other miscellaneous items.

Partners III-A, L.P. ("LFM Fund") and defendant Accelevation Holdings Blocker, LLC ("LFM Blocker" and, together with LFM Fund, the "LFM Members").[8] Following the purchase, members of Accelevation's management team who rolled over their equity were admitted as members of Holding. The LFM Members, Rubiera, and FTT collectively owned more than 85% of Holding's equity.[9]

Schmahl cashed out 19% of his Accelevation membership interests and rolled over the remaining 81% into Holding membership interests. Schmahl accomplished the rollover by entering into a Securities Purchase Agreement and a Rollover Agreement with Holding. Section 4(a) of the Rollover Agreement provides Holding with the right to repurchase Schmahl's Holding units upon the termination of his employment. It states:

> If Rollover Seller's employment with [Holding] or any of its Subsidiaries or Affiliates is terminated for any reason other than for Cause, then [Holding] shall have the right, but not the obligation, to repurchase some or all of the Rollover Equity at a purchase price equal to the Fair Market Value. . . .[10]

The Rollover Agreement made clear that Schmahl had no guarantee of employment and that Holding or Accelevation could "terminate his . . . employment at any time

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[8] Defendant LFM Capital Partners III GP, LLC ("LFM GP") is the general partner of LFM Fund.

[9] Although the amended complaint does not identify the percentage held by each, Schmahl alleges that LFM Fund "was the majority and controlling member of [] Holding." Am. Compl. ¶ 3. The precise percentages owned by LFM Blocker, Rubiera, and FTT are immaterial for purposes of this decision.

[10] Ex. 4 § 4(a).

for any reason or no reason, with or without cause, subject to the terms of any other written employment agreement."[11]

The Holding Operating Agreement provided that the entity would be governed by a six-person board of managers. The LFM Members had the right to appoint four managers. They appointed defendants Stephen Cook, John Jeffrey, Christopher Lin, and Daniel Shockley. All four are alleged to hold positions or interests in LFM. The non-LFM members had the right to appoint one manager. They appointed McKenrick. Holding's CEO, initially Rubiera, served as the sixth manager. Rubiera and Lin also served as Holding officers.

C. Accelevation Terminates Schmahl and Holding Repurchases His Units.

Three weeks after the sale closed, representatives of LFM visited Accelevation's Ohio facility. Those representatives were allegedly rude to Schmahl when he gave them a plant tour. Schmahl returned with the representatives to a meeting with Accelevation's leadership team, a meeting which Schmahl was asked to leave. Later that same day, Rubiera and McKenrick informed Schmahl that LFM wanted to go in a different direction and that Schmahl was terminated.

On November 30, 2022, Holding exercised its right under Section 4 of the Rollover Agreement to repurchase Schmahl's Holding units. The amended complaint does not allege that Schmahl contested the repurchase at the time.

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[11] *Id.* § 18.

D. Accelevation Is Sold in a Lucrative Transaction, and Schmahl Sues.

In or around late 2024, Accelevation was sold to a third party for more than $450 million. Schmahl's membership interest, had it not been repurchased by Holding more than two years earlier, would have been worth approximately $15 million.

On November 26, 2025, Schmahl initiated this action by filing his verified complaint. After the defendants moved to dismiss, Schmahl filed his operative amended complaint on March 20, 2026. Count I asserts a claim for breach of fiduciary duty against the LFM Members, Rubiera, Lin, and FTT. Count II asserts a claim for aiding and abetting a breach of fiduciary duty against LFM Blocker, LFM GP, Shockley, Cook, Jeffrey, Lin, Rubiera, FTT, and McKenrick. Count III asserts a claim for breach of the implied covenant against all defendants. Count IV asserts a claim for civil conspiracy against all defendants.

II. LEGAL ANALYSIS

The defendants have moved to dismiss the amended complaint under Rule 12(b)(6) for failure to state a claim on which relief can be granted. When considering such a motion, the court accepts as true all well-pled factual allegations and draws all reasonable inferences in favor of the plaintiff.[12] The court need not "accept conclusory allegations unsupported by specific facts or . . . draw unreasonable

[12] *Cent. Mortg. Co. v. Morgan Stanley Mortg. Cap. Hldgs. LLC*, 27 A.3d 531, 535 (Del. 2011).

inferences in favor of the non-moving party."[13] A complaint will be dismissed only if "the plaintiff would not be entitled to recover under any reasonably conceivable set of circumstances."[14]

A. The Amended Complaint Fails to State a Claim for Breach of Fiduciary Duty.

The gravamen of Count I is that the LFM Members, FTT, Rubiera, and Lin breached their fiduciary duties as members and officers "by planning and orchestrating an unlawful scheme to redeem [Schmahl's] interest in [] Holding involuntarily," which Schmahl alleges was "done in bad faith and solely for their own benefit in their capacities as members in violation of their duties to [Schmahl]."[15] This count fails to state a claim for several reasons.

"It is a well-settled principle that where a dispute arises from obligations that are expressly addressed by contract, that dispute will be treated as a breach of contract claim."[16] In *Nemec v. Shrader*, the Delaware Supreme Court affirmed the dismissal of a claim that directors breached their fiduciary duties by causing a

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[13] *Price v. E.I. du Pont de Nemours & Co.*, 26 A.3d 162, 166 (Del. 2011), *overruled on other grounds by Ramsey v. Ga. S. Univ. Advanced Dev. Ctr.*, 189 A.3d 1255, 1277 (Del. 2018).

[14] *Cent. Mortg. Co.*, 27 A.3d at 535.

[15] Am. Compl. ¶ 86.

[16] *Nemec*, 991 A.2d at 1129; *see also New Enter. Assocs. 14, L.P. v. Rich*, 295 A.3d 520, 562 & n.135 (Del. Ch. 2023) (collecting Delaware cases holding that "a claim for breach of contract occupies the field and preempts overlapping claims for breach of duty against corporate fiduciaries").

corporation to exercise a contractual right to redeem two stockholders' shares. The Supreme Court explained that "the nature and scope of the Directors' duties when causing the Company to exercise its right to redeem shares covered by the Stock Plan were intended to be defined solely by reference to that contract."[17] Similarly here, the Rollover Agreement defines Holding's right to redeem Schmahl's units. As in *Nemec*, Schmahl's rights regarding the redemption are measured by that contract and not equitable principles.[18]

Holding's members affirmed the primacy of contractual principles in their relationship by broadly waiving their right to bring claims for breach of fiduciary duty. Section 5.7(c) of the Holding Operating Agreement states:

> To the maximum extent permitted by applicable law, but without limitation on the obligations of the Officers pursuant to Section 5.6(c) (or of the rights of the LLC or the Members in respect thereof), each Member hereby waives any claim or cause of action by such Person against each Manager and each of his or her Related Persons for any breach of any fiduciary duty to the LLC, its Members or any Subsidiary of the LLC by such Person . . . .[19]

Schmahl's pleading tacitly acknowledges Section 5.7(c)'s validity by not asserting Count I against any of Holding's managers in that capacity. But Section

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[17] *Nemec*, 991 A.2d at 1129.

[18] *See also Nelson v. JAED Corp.*, 2013 WL 1092200, at *6 (Del. Super. Jan. 23, 2013) (dismissing fiduciary-breach claim against employer for exercising contractual right to repurchase terminated employee's shares because "[t]he duties at issue . . . are derived from the parties' contractual, as opposed to their fiduciary, relationship.") (quotations omitted).

[19] Ex. 1 § 5.7(c).

5.7(c)'s waiver also encompasses claims against "Related Persons," which is defined to include "such Manager's agents and representatives *and the Person that designated such Manager (and all Affiliates of such designating Person)*."[20] The LFM Members designated four managers and are alleged affiliates of those managers. Rubiera and FTT, along with the other non-LFM members, designated another manager. FTT is an alleged affiliate of that manager. Rubiera is also himself a manager. The Holding Operating Agreement thus waives Schmahl's claim against the Count I defendants for breaching their fiduciary duties in their purported capacities as controlling members.[21] Schmahl's answering brief does not dispute this.

Schmahl instead argues that Section 5.7(c) is unenforceable because he became bound by the Holding Operating Agreement under duress. As Schmahl sees it, he had no "free will" because the Drag-Along Provision compelled him, first, to sell his units to Holding and, second, to execute the Rollover Agreement that made him a member of Holding.[22] But Schmahl *chose* to become a member of Accelevation subject to the Drag-Along Provision contained in that entity's operating agreement. He therefore consented to the possibility that he could be compelled to sell his units to someone

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[20] *Id.* Art. I (emphasis added).

[21] Additionally, for the reasons summarized in the defendants' briefing, Schmahl has not adequately pled that Rubiera and FTT were part of a control group with the LFM Members. *See* Dkt. 27 at 20-21; Dkt. 33 at 11. Rubiera and FTT would not owe Schmahl fiduciary duties as minority members.

[22] *See* Ans. Br. 22-24.

else and that, in that transaction, he could receive equity in a different entity with a different governance structure.[23] The amended complaint also does not allege that Schmahl was forced to roll over his equity into Holding.

Schmahl next argues that, notwithstanding Section 5.7(c), fiduciary liability is preserved by Section 5.7(a) of the Holding Operating Agreement. That section broadly exculpates managers and their affiliates from liability "to the maximum extent permitted by" Delaware law.[24] Schmahl latches on to a proviso to Section 5.7(a)'s exculpatory provision, which preserves personal liability "to the extent attributable to such Person's or its Affiliate's, employee's, agent's, or representative's gross negligence, willful misconduct, or knowing violation of applicable law."[25]

I do not read Section 5.7(a)'s proviso as negating Section 5.7(c)'s waiver of claims for breach of fiduciary duty. Section 5.7(a) sweeps more broadly than Section 5.7(c) by exculpating managers and their Related Persons from all types of liability, including contract liability and non-fiduciary tort liability. The better reading of Section 5.7(a), in my view, is that it preserves non-fiduciary personal liability if the

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[23] Indeed, given that Schmahl's investment happened shortly before the sale, and given that Schmahl was aware of the anticipated sale when he invested, the only reasonable inference is that Schmahl understood that he would be dragged.

[24] Ex. 1 § 5.7(a).

[25] *Id.*

manager acts with a culpable state of mind. Section 5.7(a) does not, however, restore fiduciary liability, which is separately addressed and waived by Section 5.7(c).[26]

Even if Section 5.7(a) preserved fiduciary liability for "gross negligence, willful misconduct, or knowing violation of applicable law," it is not reasonably conceivable from the well-pled allegations of the amended complaint that the defendants engaged in culpable misconduct. Schmahl's allegation that LFM, Rubiera, and McKenrick engaged in a "conspiracy to alienate [Schmahl] of his membership interest" is conclusory.[27] For starters, Schmahl does not identify a plausible motive for the co-conspirators to conspire against him. Schmahl theorizes that the co-conspirators wanted to increase their relative ownership of Holding by buying him out.[28] But Schmahl held a small percentage of Holding's equity; buying him out would increase the other members' relative ownership interests only slightly.[29] And Holding did not

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[26] *See Thompson St. Cap. P'rs IV, L.P. v. Sonova U.S. Hearing Instruments, LLC*, 340 A.3d 1151, 1166 (Del. 2025) ("[G]eneral terms of the contract must yield to more specific terms.") (internal quotation marks omitted). Section 5.7(c)'s waiver cannot, by law, extend to conduct that constitutes a breach of the implied covenant of good faith and fair dealing. *See* 6 *Del. C.* § 18-1101(c). As explained herein, Schmahl has not stated a claim for breach of the implied covenant.

[27] Am. Compl. ¶ 38.

[28] *See* Ans. Br. 15-16.

[29] While the precise percentage of Schmahl's ownership interest in Holding is not pled, the amended complaint alleges that the LFM Members, Rubiera, and FTT collectively owned more than 85% of Holding's equity. Am. Compl. ¶ 64. The amended complaint also alleges that Schmahl only held a 5.61% equity interest in Accelevation prior to the rollover. Am. Compl. ¶ 28. It is not reasonable to infer that Schmahl's interest in Holding was substantially greater than what he had before the rollover.

redeem Schmahl's interest for free. Holding was required to pay fair market value in the repurchase, a cost that was borne by Holding's remaining members. Schmahl does not allege that Holding failed to pay fair market value as of the date of the repurchase. By repurchasing Schmahl's units, the other members took on the risks associated with additional equity ownership. Schmahl received a guaranteed payout. While the membership interests later turned out to be worth more than what Schmahl was paid, Schmahl does not allege that this was known or knowable to the defendants at the time of the repurchase.

The amended complaint also does not allege facts supporting a reasonable inference that LFM, Rubiera, and McKenrick entered into a conspiracy to maliciously harm Schmahl. Schmahl envisions an elaborate, multi-month scheme that involved (1) requiring Schmahl to directly hold membership interests in Accelevation, rather than holding them through YFP; (2) invoking the Drag-Along Provision in the Accelevation Operating Agreement; (3) including a repurchase right in the Rollover Agreement and broad limitations on fiduciary liability in the Holding Operating Agreement; (4) firing Schmahl; and (5) invoking the repurchase right.[30] All of these steps are, on their face, ordinary-course commercial actions. It makes sense that an acquirer would allow only management to participate in a rollover.[31] There is likewise

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[30] Ans. Br. 19-20.

[31] *See In re Alloy, Inc.*, 2011 WL 4863716, at *12 (Del. Ch. Oct. 13, 2011) (management rollovers "can be explained on grounds other than bad faith. One plausible, and legitimate, explanation is that ZelnickMedia wanted to ensure that those members of Alloy's management with the best knowledge and expertise

nothing unusual about members invoking a drag-along right to effectuate a whole-company sale.[32] Nor is it unusual for a company to reserve the right to repurchase an employee's equity in the event of termination, and then for the company to invoke that right upon termination.[33]

Perhaps additional well-pled facts could support a reasonable inference that this unremarkable sequence of events was really a conspiracy to "squeeze out" Schmahl at an unfair price. The amended complaint, however, does not include such facts. "Even in an era of notice pleading, conclusory allegations of conspiracy have

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regarding the Company continued to manage its affairs after the Merger and that they were properly incentivized to do so."); *Kahn v. Stern,* 2017 WL 3701611, at *13 (Del. Ch. Aug. 28, 2017) (dismissing claim that a board acted in bad faith by approving a management rollover because "a potential rational business purpose exists: to incentivize proper management of the Company through and after the Merger"), *aff'd*, 183 A.3d 715 (Del. 2018).

[32] *See, e.g.*, *Manti Hldgs., LLC v. Authentix Acq. Co.*, 261 A.3d 1199, 1209, 1224-25 (Del. 2021) (addressing exercise of drag-along right); *New Enter. Assocs. 14, L.P.*, 295 A.3d at 529, 538 (addressing exercise of drag-along right); *Mudrick Cap. Mgmt. L.P. v. QuarterNorth Energy Inc.*, 2024 WL 807137, at *7 (Del. Ch. Feb. 26, 2024) (addressing drag-along right and noting that "[d]rag-along provisions are common in stockholder agreements and enable a majority to force the closing of a change-of-control transaction").

[33] *See, e.g.*, *Nelson*, 2013 WL 1092200, at *6-7 (addressing employer's exercise of right to repurchase former employee's equity); *Metro Storage Int'l LLC v. Harron*, 275 A.3d 810, 874-83 (Del. Ch. 2022) (same); *MERA USA, LLC v. MCS Burbank, LLC*, 2026 WL 1894905, at *6-8 (Del. Ch. June 15, 2026) (ORDER) (addressing joint venture's exercise of right to repurchase former member's equity following termination of member's designee).

regularly been rejected."[34] All Schmahl has pled is that Accelevation's and Holding's controlling members caused those entities to exercise contractual rights in a way that later disadvantaged Schmahl. That does not support a reasonable inference that the defendants engaged in willful misconduct or breached any fiduciary duties that they might have owed.[35]

For all these reasons, Count I fails to state a claim for breach of fiduciary duty. It necessarily follows that Count II fails to state a claim for aiding and abetting.[36]

B. The Amended Complaint Fails to State a Claim for Breach of the Implied Covenant.

Count III, ostensibly asserted against all defendants, sets forth a claim for breach of the implied covenant of good faith and fair dealing.[37] Schmahl claims that

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[34] *BV Advisory P'rs, LLC v. Quantum Computing Inc.*, 2024 WL 2723119, at *16 (Del. Ch. May 28, 2024) (quoting *Greenfield v. Tele-Commc'ns*, 1989 WL 48738, at *3 (Del. Ch. May 10, 1989)).

[35] Thus, to the extent that Count I alleges a breach of fiduciary duty against Rubiera and Lin as officers (for whom Section 5.7(c) preserves fiduciary duties), it fails to state a claim. Additionally, the amended complaint is devoid of any well-pled allegations suggesting that Rubiera and Lin took any action as officers to further the supposed conspiracy. Virtually all of Schmahl's allegations focus on Rubiera's and Lin's actions before they were appointed Holding officers. *See Arnold v. Soc'y for Savings Bancorp, Inc.*, 650 A.2d 1270, 1288 (Del. 1994) (holding that a breach of fiduciary duty claim against an officer-director asserted "in his role as an officer" "lacks merit" where the plaintiff "failed to highlight any specific actions [the officer-director] undertook as an officer (as distinct from actions as a director).").

[36] *See In re Hennessy Cap. Acq. Corp. IV S'holder Litig.*, 318 A.3d 306, 329 (Del. Ch. 2024) ("[A] claim for aiding and abetting a breach of fiduciary duty cannot survive if the underlying fiduciary duty claims do not." (citation modified)).

[37] The implied covenant does not apply to non-parties to a contract. *See Gerber v. Enter. Prods. Hldgs., LLC*, 67 A.3d 400, 421 n.53 (Del. 2013), *overruled on other*

the Holding Operating Agreement and the Rollover Agreement include an implied term that those agreements should not be used "to involuntarily redeem a member's interest in [Holding] solely to accrue a higher percentage of membership units and profits for the other members and those who stood to benefit from them."[38]

The implied covenant "functions as a limited 'gap-filler': it enforces the parties' reasonable expectations in circumstances that they could not foresee and did not address in their written agreement, but it may not be used to rewrite or contradict express terms."[39] Delaware courts "only imply contract terms when the party asserting the implied covenant proves that the other party has acted arbitrarily or unreasonably, thereby frustrating the fruits of the bargain that the asserting party reasonably expected."[40]

Here, there is no gap for the implied covenant to fill. The Rollover Agreement gave Holding the unqualified right to redeem Schmahl's interest at fair market value upon the termination of his employment. Schmahl "cannot base a claim for breach of

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grounds by Winshall v. Viacom Int'l, Inc., 76 A.3d 808, 815 n.13 (Del. 2013). Count III is thus only properly asserted against the counterparties to the Holding Operating Agreement and the Rollover Agreement, namely, Holding and its members. Since Count III does not state a claim, the court need not dwell further on this issue.

[38] Am. Compl. ¶¶ 108-09.

[39] *Johnson & Johnson v. Fortis Advisors LLC*, 352 A.3d 229, 251 (Del. 2026).

[40] *Nemec*, 991 A.2d at 1126.

the implied covenant on conduct authorized by the terms of the agreement."[41] Nor can Schmahl imply terms "that contradict[] a clear exercise of an express contractual right."[42]

Nemec is again on point. In that case, the plaintiffs argued that the defendant corporation breached the implied covenant by redeeming their stock on the eve of a sale transaction that would have dramatically increased the value of the plaintiffs' shares. The Court of Chancery rejected the argument that the corporation's opportunistic exercise of its redemption right constituted a breach of the implied covenant, explaining that "[c]ontractually negotiated put and call rights are intended by both parties to be exercised at the time that is most advantageous to the party invoking the option."[43] The Delaware Supreme Court affirmed, finding that the company was entitled "to exercise its absolute contractual right to redeem the retired

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[41] *Dunlap v. State Farm Fire & Cas. Co.*, 878 A.2d 434, 441 (Del. 2005); *Glaxo Gp. Ltd. v. DRIT LP*, 248 A.3d 911, 920 (Del. 2021) (explaining that the implied covenant "cannot be invoked when the contract addresses the conduct at issue" (internal quotation marks omitted)).

[42] *Nemec*, 991 A.2d at 1127; *Fisk Ventures, LLC v. Segal*, 2008 WL 1961156, at *10 (Del. Ch. May 7, 2008) ("[B]ecause the implied covenant is, by definition, *implied,* and because it protects the *spirit* of the agreement rather than the form, it cannot be invoked where the contract itself expressly covers the subject at issue.").

[43] *Nemec v. Shrader*, 2009 WL 1204346, at *5 (Del. Ch. Apr. 30, 2009), *aff'd*, 991 A.2d 1120 (Del. 2010).

stockholders' shares at a time that was most advantageous to the Company's working stockholders."[44]

Schmahl's allegations are weaker than those in *Nemec*. Schmahl does not allege that, at the time of the repurchase, Holding's other members were positioned to realize an immediate gain from the transaction. Schmahl concedes that Holding paid fair market value for his units. Regardless, Schmahl's implied term is not "so obvious as to go without saying or to be necessary for business efficacy."[45] It was entirely foreseeable that Holding would exercise its repurchase right upon an employee's termination to free up additional equity for the remaining employees and investors. It is not reasonably conceivable that, at the time of contracting, Holding would have agreed to limit its repurchase right in the way that Schmahl proposes.[46]

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[44] *Nemec*, 991 A.2d at 1127; *see also Moscowitz v. Theory Entm't LLC*, 2020 WL 6304899, at *24 (Del. Ch. Oct. 28, 2020) (dismissing former manager's implied covenant challenge to company's repurchase of his equity because the "parties set firm parameters for voluntary Terminations of Service, and clear consequences for resigning without sufficient notice"); *MERA USA, LLC v. MCS Burbank, LLC*, 2026 WL 2547077, at *23 (Del. Ch. Aug. 28, 2026) ("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." (internal quotation marks omitted)).

[45] *Facilities Hldgs., LLC v. ASM Glob. Parent, LLC*, 2026 WL 1815842, at *11 (Del. Ch. June 24, 2026).

[46] *Miller v. HCP & Co.*, 2018 WL 656378, at *12 (Del. Ch. Feb. 1, 2018) ("The question here is whether it is clear from what was expressly agreed upon that the parties who negotiated the express terms of the contract would have agreed to proscribe the act later complained of as a breach of the implied covenant of good faith—had they thought to negotiate with respect to that matter." (internal quotation

Finally, for the reasons explained in the prior section, Schmahl has not alleged that the defendants invoked their contractual rights "maliciously and without any justification rationally related to the shared contractual purpose."[47]

Count III fails to state a claim.

C. The Amended Complaint Fails to State a Claim for Civil Conspiracy.

"Civil conspiracy is not an independent cause of action; it must be predicated on an underlying wrong."[48] The court has already concluded that all other counts of the amended complaint fail to state a claim. Schmahl "has thus failed to state a claim for civil conspiracy because he has not properly alleged an underlying wrong on which a claim of conspiracy could be based."[49]

III. CONCLUSION

The motion to dismiss is granted. The amended complaint is dismissed with prejudice.

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marks omitted)), *aff'd sub nom. Miller v. HCP Trumpet Invs., LLC*, 194 A.3d 908 (Del. 2018).

[47] *Guilbeau v. Footprint Int'l Holdco, Inc.*, 358 A.3d 248, 279 (Del. Ch. 2026).

[48] *Kuroda v. SPJS Hldgs., L.L.C.*, 971 A.2d 872, 892 (Del. Ch. 2009).

[49] *Id.* As the court has found that Schmahl's claims all fail at the pleading stage on other grounds, the court need not address the defendants' argument that the claims are barred by laches.