APPELLATE DIVISION, SUPREME COURT OF THE STATE OF NEW YORK, FIRST DEPARTMENT

DTI-DSIC, LLC v. 930-DSIC, LLC

DTI-DSIC, LLC, 2026 NY Slip Op 03919 (Appellate Division Supreme Court of the State of New York First Department 2026) · No. Index No. 650762/25; Appeal No. 6950; Case No. 2025-05825 · Decided June 23, 2026

SUMMARY

The Appellate Division, First Department modified an order concerning claims arising from the forced sale of an LLC member's interest after default. The court dismissed the breach of contract claim against the managing member and the breach of fiduciary duty claim, but allowed the breach of contract claim against the company and the accounting claim to proceed. The decision applied Delaware law under the parties' operating agreement.

CASE DETAILS

COURT	Appellate Division, Supreme Court of the State of New York, First Department
WRITING FOR THE COURT	Renwick, P.J.; Scarpulla, J.; González, J.; Rodriguez, J.; O'Neill Levy, J.
JURISDICTION	New York Appellate Division, First Department
DECIDED	June 23, 2026
DOCKET	Index No. 650762/25; Appeal No. 6950; Case No. 2025-05825
DISPOSITION	other
PROCEDURAL POSTURE	Plaintiff appealed from an order of Supreme Court, New York County, denying defendants' motion to dismiss claims for breach of contract, breach of fiduciary duty, and an accounting.
STANDARD OF REVIEW	On a motion to dismiss, the court determines whether the pleaded facts state cognizable causes of action, accepting properly pleaded allegations as true. The Appellate Division reviewed the pleading sufficiency and the operating agreement as a matter of law.
PRECEDENTIAL VALUE	Published intermediate appellate decision; uncorrected and subject to revision before publication in the Official Reports.
PARTIES	930-DSIC, LLC, 930-DSIC Partner, LLC, other defendants v. DTI-DSIC, LLC

TOPICS

breach of contract · breach of fiduciary duty · accounting · remedies · appellate procedure

PRACTICE AREAS

contracts · corporate law · commercial litigation · remedies · appellate procedure

QUESTIONS PRESENTED

1. Whether DTI-DSIC adequately pleaded breach of contract against the Managing Member.
2. Whether the exercise of contractual discretion by the Managing Member supported a breach-of-fiduciary-duty claim.
3. Whether DTI-DSIC adequately pleaded breach of contract against the Company based on allegedly improper deductions from forced-sale proceeds.
4. Whether DTI-DSIC adequately pleaded a cause of action for an accounting.

HOLDINGS

1. The breach-of-contract claim against the Managing Member was properly dismissed because DTI-DSIC did not allege conduct that violated the operating agreement or that the Managing Member exercised its contractual authority in bad faith.
2. The breach-of-fiduciary-duty cause of action was properly dismissed because the Managing Member's exercise of contractual rights could not form the basis of that claim.
3. DTI-DSIC stated a breach-of-contract claim against the Company by alleging that the Company improperly reduced the proceeds of the forced sales.
4. DTI-DSIC sufficiently pleaded an accounting claim by alleging that it demanded an accounting of the forced-sale proceeds and that the Managing Member refused to provide one.

KEY QUOTATIONS

> *“The exercise of a contractual right cannot form the basis of a cause of action for breach of fiduciary duty”* (*2)

> *“Moreover, the accounting cause of action is not duplicative of the breach of contract cause of action because the two causes of action seek different remedies.”* (*3)

FACTUAL BACKGROUND

DTI-DSIC, a Missouri LLC, invested $1.85 million in 930-DSIC Company, a Delaware LLC, for an 11.22% membership interest. After DTI-DSIC allegedly defaulted on obligations totaling $41,927, the Company and its Managing Member conducted two forced sales of portions or all of DTI-DSIC's membership interest under the Company's Delaware-law operating agreement. DTI-DSIC alleged that defendants improperly deducted amounts from the sale proceeds and withheld proceeds, and it demanded an accounting that the Managing Member refused to provide.

PROCEDURAL HISTORY

DTI-DSIC commenced an action concerning two forced sales of its membership interest in 930-DSIC Company and alleged improper deductions and withholding of sale proceeds. Supreme Court denied defendants' motion to dismiss the specified claims. The Appellate Division modified the order by dismissing the breach-of-contract claim against the Managing Member and the breach-of-fiduciary-duty claim, while otherwise affirming.

DISPOSITION

other

CASES CITED

- Construction Indus. Laborers Pension Fund v. Bingle, 2022 WL 4102492, *9, 2022 Del. Ch. LEXIS 223, *24 (Del. Ch. Sept. 6, 2022)
- Glaxo Group Ltd. v. DRIT LP, 248 A.3d 911, 916 (Del. 2021)
- Godfrey v. Spano, 13 N.Y.3d 358, 373 (2009)
- Nemec v. Shrader, 991 A.2d 1120, 1129 (Del. 2010)
- Nero v. Littleton, 1998 WL 229526, *4, 1998 Del. Ch. LEXIS 57, *14 (Del. Ch. Apr. 30, 1998)
- Gelfman v. Weeden Invs., L.P., 792 A.2d 977, 986-987 (Del. Ch. 2001)
- William Penn Partnership v. Saliba, 13 A.3d 749, 756 (Del. 2011)

OPINION

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PER CURIAM.

DTI-DSIC, LLC v 930-DSIC, LLC
2026 NY Slip Op 03919 June 23, 2026 Appellate Division, First Department Published by New York State Law Reporting Bureau pursuant to Judiciary Law § 431. This decision is uncorrected and subject to revision before publication in the Official Reports. DTI-DSIC, LLC, Respondent-Appellant, v 930-DSIC, LLC, et al., Appellants-Respondents. Decided and Entered: June 23, 2026 Index No. 650762/25|Appeal No. 6950|Case No. 2025-05825| Before: Renwick, P.J., Scarpulla, González, Rodriguez, O'Neill Levy, JJ. Skadden, Arps, Slate, Meagher & Flom LLP, New York (Michael C. Griffin of counsel), for appellants-respondents. Cole Schotz P.C., New York (Arielle H. Wasserman of counsel), for respondent-appellant. [*1] Order, Supreme Court, New York County (Melissa A. Crane, J.), entered August 15, 2025, which, to the extent appealed from as limited by the briefs, denied defendants' motion insofar as it sought to dismiss plaintiff's claims

for breach of contract, breach of fiduciary duty, and accounting, unanimously modified, on the law, to the extent of granting the motion insofar as it sought to dismiss the breach of contract cause of action as against defendant 930-DSIC Partner, LLC (the Managing Member) and the breach of fiduciary duty cause of action, and otherwise affirmed, without costs. Plaintiff is a Missouri LLC that invested $1.85 million in defendant 930-DSIC Company (Company), a Delaware LLC, in exchange for an 11.22% membership interest. Managing Member is the sole managing member of the Company. The parties' relationship is governed by the Company's Amended and Restated Operating Agreement (operating agreement), which in turn is governed by Delaware law. On May 12, 2014, Managing Member sent plaintiff a notice of default, stating that plaintiff was "in default of its obligations to make Capital Contributions in respect of certain Management Fees and Administrative Expenses" totaling $41,927. The notice further stated that plaintiff was a "Defaulting Member" under Section 4.2(a) of the operating agreement and that "[t]he Company and the Managing Member . . . reserve all of the rights and remedies that [they] have under the [Operating] Agreement and/or applicable law," including to require the sale of plaintiff's interest. On July 20, 2021, the Company sent plaintiff a letter informing it that a portion of its interest was sold via a tender offer. According to the letter, some of the 2021 sale proceeds were used to pay part of plaintiff's overdue management fees and expenses and the remainder was placed in escrow. On January 18, 2024, Managing Member informed plaintiff that, pursuant to section 4.2 of the Operating Agreement, it was forcing a sale of plaintiff's remaining membership interest. In exchange, Managing Member issued plaintiff a non-recourse promissory note. In the accompanying membership interest transfer instrument, Managing Member stated that it had determined that the sale price for plaintiff's entire interest would be $1,677,382.95, "which represents (a) a fair and reasonable price for [plaintiff's] interest . . . as determined by the Managing Member in good faith, less (b) the Managing Member's legal expenses associated with [plaintiff's] Default (including the costs of effectuating the Required Sale)." Plaintiff commenced this action seeking to hold defendants liable for forcing the two sales of its membership interest in the Company. Plaintiff alleges that defendants took improper deductions from the sale proceeds and has wrongfully withheld the proceeds from plaintiff. [*2] Supreme Court should have granted defendants' motion to dismiss plaintiff's breach of contract claim as to the Managing Member because plaintiff did not allege that any conduct by the Managing Member violated the parties' operating agreement. The record demonstrates that plaintiff was in default, and that the Managing Member had the discretion under the operating agreement to force the sale of defaulting members' interests, to determine the purchase price in a forced sale, and to determine the time and the size of any disbursement of the proceeds to the defaulting member. Further, the operating agreement provided that the Managing Member could not be held liable for matters left to its discretion unless it exercised its powers in bad faith. Plaintiff failed to allege that the Managing Member knew that its conduct contravened the terms of the operating agreement, and therefore did not plead that it exercised its contractual authority in bad faith (see Construction Indus. Laborers

Pension Fund v Bingle , 2022 WL 4102492 , *9, 2022 Del Ch LEXIS 223, *24 [Del Ch Sept. 6, 2022, C.A. No. 2021-0940-SG] ["intent" is an element of bad faith]; see also Glaxo Group Ltd. v DRIT LP , 248 A3d 911, 916 [Del 2021]). In addition, plaintiff makes only conclusory allegations that defendants "scheme[d] to defraud innocent investors" (see Godfrey v Spano , 13 NY3d 358, 373 [2009]). For similar reasons, Supreme Court should have dismissed the cause of action for breach of fiduciary duty. The Managing Member exercised its contractual right to determine the price of any forced sale and the timing of any payment of the proceeds. The exercise of a contractual right cannot form the basis of a cause of action for breach of fiduciary duty (see Nemec v Shrader , 991 A2d 1120, 1129 [Del 2010]). Plaintiff stated a cause of action for breach of contract as against the Company by alleging that the Company made improper deductions from the proceeds of the forced sales. Although the operating agreement gave the Company "the right to set-off any or all amounts owing by a Defaulting Member to the Company against all distributions and other amounts from time to time payable by the Company," the agreement did not vest the Company with the same discretion it afforded to the Managing Member. Instead, the operating agreement allowed the Company to reduce disbursements to defaulting members only by the amounts owed by the defaulting member. Through its allegations that the Company improperly reduced the sales proceeds, plaintiff sufficiently alleged that the Company breached the operating agreement. [*3] Finally, plaintiff sufficiently pleaded a cause of action for an accounting by alleging that it demanded an accounting concerning the forced sales proceeds, but that the Managing Member refused to provide it (see Nero v Littleton , 1998 WL 229526 , *4, 1998 Del Ch LEXIS 57, *14 [Del Ch Apr. 30, 1998, Civil Action No. 1622]). The Managing Member remains a fiduciary to plaintiff even though the operating agreement modified its fiduciary duties (see Gelfman v Weeden Invs., L.P. , 792 A2d 977, 986-987 [Del Ch 2001]; see also William Pen Partnership v Saliba , 13 A3d 749, 756 [Del 2011] [elimination of a fiduciary duty must be express and unambiguous]). Moreover, the accounting cause of action is not duplicative of the breach of contract cause of action because the two causes of action seek different remedies. We have considered plaintiff's remaining contentions and find them unavailing. THIS CONSTITUTES THE DECISION AND ORDER OF THE SUPREME COURT, APPELLATE DIVISION, FIRST DEPARTMENT. ENTERED: June 23, 2026