

**SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY**

PRESENT: HON. GERALD LEBOVITS

PART

07

Justice

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INDEX NO.

650038/2025GONZALVE BICH, CHARLES BICH, and GUILLAUME
BICH,

MOTION SEQ. NO.

001 002

Plaintiffs,

- v -

**DECISION + ORDER ON
MOTION**

VERONIQUE BICH,

Defendant.

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The following e-filed documents, listed by NYSCEF document number (Motion 001) 32, 33, 34, 35, 36, 37, 38, 39, 40, 41, 42, 43, 44, 48, 49, 50, 51, 52, 53, 54

were read on this motion for

SUMMARY JUDGMENT

The following e-filed documents, listed by NYSCEF document number (Motion 002) 24, 25, 26, 27, 28, 29, 30, 31, 46, 47

were read on this motion for

SUMMARY JUDGMENT

Charish Law Group P.C., New York, NY (Michael Charish of counsel), for
plaintiffs/counterclaim defendants Gonzalve Bich, Charles Bich, and Guillaume Bich.
Glenn Agre Bergman & Fuentes LLP, New York, NY (Michael Bowen of counsel), for
defendant/counterclaim-plaintiff Veronique Bich.

Gerald Lebovits, J.:

This dispute arises out of bitter and lengthy litigation over Grenelle LLC between Veronique Bich (Ms. Bich) and her sons, Gonzalve Bich, Charles Bich, and Guillaume Bich (collectively, the Bich Brothers). Grenelle LLC's primary assets are an apartment in Paris and 400,000 shares of Société Bic S.A., a manufacturing company that produces items including pens, stationery, lighters, and razors. After years of fighting, the Ms. Bich and her sons entered into a settlement agreement on March 5, 2024. The settlement agreement includes terms for an amendment to Grenelle LLC's operating agreement.

The Bich Brothers now bring this action to resolve a controversy between them and Ms. Bich over the interpretation of their settlement agreement and Grenelle LLC's amended operating agreement. The Bich Brothers ask this court to enter a declaration that (i) they are not obligated under the settlement to execute Ms. Bich's proposed amendment to the Grenelle operating agreement; and (ii) the Grenelle operating agreement, as altered by the Bich Brothers' amendment, is valid and compliant with the parties' prior settlement. Ms. Bich counterclaims for a declaratory judgment that (i) the Bich Brothers breached the terms of the settlement agreement

by adopting their preferred amendment to the Grenelle operating agreement (and refusing to adopt Ms. Bich's preferred amendment); and (ii) the Bich Brothers are required to rescind their amendment and adopt Ms. Bich's preferred amendment. She also asserts a counterclaim for breach of the implied covenant of good faith and fair dealing, seeking damages arising from the Bich Brothers' alleged breach of the settlement agreement.

On motion sequence 001, the Bich Brothers move under CPLR 3212 for summary judgment in their favor on their claims for declaratory relief, for summary judgment dismissing Ms. Bich's counterclaims, and for an award of attorney fees. On motion sequence 002, Ms. Bich moves under CPLR 3212 for summary judgment in her favor on her counterclaim for declaratory relief and her counterclaim for breach of the implied covenant, for summary judgment rejecting the Bich Brothers' proposed declaration, and for an award of attorney fees.

Motion sequences 001 and 002 are consolidated for disposition. Each motion is granted in part and denied in part.

The court declares as follows: (i) the Bich Brothers' amendment to the Grenelle LLC operating agreement does not comply with the settlement agreement, such that the Bich Brothers are in breach of the settlement agreement unless they rescind the amendment; (ii) Ms. Bich's proposed amendment is substantively consistent with the settlement agreement; (iii) the Bich Brothers are not required to execute Ms. Bich's proposed amendment in particular (although the court encourages them to do so), but must, under the settlement, adopt an amendment to the Grenelle operating agreement consistent with the settlement as interpreted in this decision.

The court denies Ms. Bich's request for summary judgment in her favor on her breach-of-implied-covenant claim, and grants the Bich Brothers' request for summary judgment dismissing the claim. And the court denies the parties' respective requests for attorney fees.

BACKGROUND

On October 27, 2006, the Bich Brothers and the late Bruno Bich (Mr. Bich)—the Bich Brothers' father and Ms. Bich's then-husband—formed Grenelle LLC as a Delaware limited liability company. Ms. Bich, the Bich Brothers, and Mr. Bich executed an initial operating agreement for Grenelle on October 31, 2006. The Bich Brothers and Mr. Bich amended the operating agreement effective February 23, 2021. (NYSCEF No. 44 at 1-2 ¶¶ 3, 4.) The operating agreement is Grenelle LLC's governing instrument. It includes sections about membership rights, ownership interests, and management structure.

After much litigation among Ms. Bich, Mr. Bich, and the Bich Brothers,¹ the parties entered into a confidential settlement agreement and mutual general release on March 5, 2024.

¹ See e.g. *Bich v Bich*, 2024 NY Slip Op 50234(U) (Sup Ct, NY County 2024); *Bich v Bich*, 2024 NY Slip Op 50186(U) (Sup Ct, NY County 2024); *Bich v Bich*, 220 AD3d 402 (1st Dept 2023); *Bich v Bich*, 2023 NY Slip Op 50303(U) (Sup Ct, NY County 2023); *Bich v Bich* 2023 NY Slip Op 50304(U) (Sup Ct, NY County 2023); *Bich v Bich*, 2022 NY Slip Op 50079(U) (Sup Ct, NY County 2022).

(NYSCEF No. 44 at 2 ¶ 7.) Section 3 of the settlement agreement provides that the Bich Brothers would make specified amendments to the version of the Grenelle LLC operating agreement then in effect, including making Ms. Bich a full member of Grenelle and eliminating the managing director position. (NYSCEF No. 2 at 1.)

On December 3, 2024, Ms. Bich proposed an amendment to the operating agreement. On December 16, the Bich Brothers responded with a then-current draft of an amended and restated operating agreement for Grenelle. On December 27, Ms. Bich rejected the proposed draft and replied with a revised version of her amendment. On January 3, the Bich Brothers executed their amended operating agreement and commenced this action.

I. Whether the Bich Brothers Must Accept and Execute Ms. Bich's Amendment to the Grenelle LLC Operating Agreement

On motion sequence 001, the Bich Brothers seek summary judgment on their request for a declaration that they are not obligated to accept and execute Ms. Bich's proposed amendment—and that they did not breach the settlement agreement by declining to do so. (NYSCEF No. 42 at 5.)

The Bich Brothers argue that as the members of Grenelle, they are the only ones who may amend the operating agreement consistent with § 9.4 of that agreement. (NYSCEF No. 42 at 5.) Section 9.4 provides that “[n]o change or modification of this Agreement shall be of any force unless such change or modification is in writing and has been signed by all of the Members.” (NYSCEF No. 4 at 13.) The Bich Brothers contend that § 3 of the settlement agreement is explicit in allocating to them, not Ms. Bich, the responsibility to amend the operating agreement. Section 3 provides that the Bich Brothers “shall amend the current Grenelle LLC Operating Agreement . . . to provide as follows and to execute such other supporting resolution or notices as may be necessary to effect the following changes and amendments. . . .” (NYSCEF No. 2 at 1; NYSCEF No. 42 at 6.)

Ms. Bich does not explain why her sons must sign and execute her amendment. But she contends that the express terms of the settlement agreement require the Bich Brothers to amend the “current” operating agreement. Ms. Bich claims that adding amendments outside those agreed on in the settlement agreement will circumvent her right under § 3 (i) of the settlement agreement. That subsection provides that all “material decisions,” which include “any amendment to [Grenelle’s] Operating Agreement, will require VB’s [Ms. Bich’s] vote. . . .” (NYSCEF No. 2 at 2.)

This court agrees with the Bich Brothers. They did not breach the settlement agreement when they declined to execute Ms. Bich’s amendment. Section 3 of the settlement agreement expressly gives the Bich Brothers, in particular, the power to amend the Grenelle operating agreement. (NYSCEF No 2 at 1-2; *Chetrit v HPS Inv. Partners, LLC*, 26 AD3d 423, 424 [1st Dept 2024] [finding that an agreement should be enforced according to the plain meaning of its terms].) The court assumes consistent usage with the rest of the settlement agreement; for example, § 5 allocates to Ms. Bich control over her estate plan using the word “shall.” (*E.g. Cordero v Transamerica Annuity Serv. Corp.*, 39 NY3d 399, 410 [2023]; NYSCEF No. 2 at 3.) Ordering the Bich Brothers to sign Ms. Bich’s proposed amendment would rewrite the settlement

agreement, something that this court may not do. (*See Brown v O'Neil*, 8 AD3d 10, 11 [1st Dept 2004] [“[A] court cannot reform an agreement to conform to what it thinks is proper, if the parties have not assented to such a reformation.”], quoting *Cohen-Davidson v Davidson*, 291 AD2d 474, 475 [2d Dept 2002].)

Ms. Bich did not become a full member of Grenelle LLC when she signed the settlement agreement. The Grenelle operating agreement still had to be amended, as well. The settlement agreement provides that the Bich Brothers “shall” amend the operating agreement. (NYSCEF No. 2 at 1.) “Shall” is indicative of the future tense by its plain meaning. The term “shall” also appears throughout the settlement agreement to stipulate future obligations rather than immediate performance. (*See* NYSCEF No. 2 at 2 [Section 2: “Within three (3) business days of the Effective Date, the Parties shall cooperate to file notices of discontinuance. . .”; § 3 (d): “Grenelle LLC shall make mandatory annual distributions of the dividends from Société Bic shares . . . within 30 days of receipt. . .”; and § 3 (f): “Any cash held by Grenelle LLC at the time of the amendment of the Grenelle Operating agreement to implement this section of the Settlement Agreement shall be distributed. . .”].)

Thus, the court agrees that the Bich Brothers are entitled as a matter of law to a declaration that they are not obligated to sign and accept Ms. Bich’s proposed amendment to the operating agreement.

II. Whether the Grenelle LLC Operating Agreement, as Amended, is Valid and Complies with the Parties’ Settlement Agreement

The Bich Brothers also seek summary judgment on their request for a declaration that Grenelle LLC’s amended operating agreement is valid and complies with the settlement agreement. They argue that the operating agreement, as amended, complies with § 9.4 of that agreement because it is a “modification” and “signed by all of the Members.” (NYSCEF No. 42 at 16.) They also contend that the amendment grants Ms. Bich all rights she bargained for: It incorporates 11 of the 12 changes stipulated in § 3 of the settlement (excluding § 3 (f), which was implemented in Spring 2024). (NYSCEF No. 42 at 18.)

Ms. Bich argues that the Grenelle LLC operating agreement, as amended, is materially inconsistent with the settlement agreement. According to Ms. Bich, the Bich Brothers have improperly conditioned her full membership in Grenelle on her ratifying all of the other changes made by their amendment, even though the amendment violates the requirement of § 3 (b) of the settlement agreement that the Bich Brothers shall make her a “full” member. Instead of granting her “full” membership, the Bich Brothers propose a dual-tier classification of membership: “founding member” versus “member.” Additionally, Ms. Bich contends that the Bich Brothers abrogated her veto rights under § 3 (i) of the settlement.

The court agrees with Ms. Bich. The plain language of the settlement agreement is unambiguous: Section 3 provides that the Bich Brothers shall make Ms. Bich a full member. (NYSCEF No. 2 at 1.) Thus, the wording of § 3 compels the Bich Brothers to amend the operating agreement to give Ms. Bich full membership, without any preconditions. (*See e.g. Keller-Goldman v Goldman*, 149 AD3d 422, 424 [1st Dept 2017] [reasoning that a court may not construe the language of a contract in a way that would change a contract’s plain meaning];

Duane Reade, Inc. v Cardtronics, LP, 54 AD3d 137, 140 [1st Dept 2008] [noting that in searching for the parties' intent, the court must accord the contract's words their reasonable meaning].)

The distinction in the amended operating agreement between Ms. Bich's conditional status as a member and the Bich Brothers' status as "founding members" violates the settlement agreement. (See NYSCEF No. 3, §§ 3.1 (b), 7.5.) Section 3 (b) of the settlement agreement unambiguously entitles Ms. Bich to "full" membership. (NYSCEF No. 2 at 1.) "Full" implies complete membership, rather than a membership that is second tier to "Founding Members." The term "Founding Members" does not appear anywhere in the settlement agreement. Nor does that agreement grant the Bich Brothers unique governance or economic privileges. (See NYSCEF No. 2.) In creating a separate membership class, the Bich Brothers breached the requirement of § 3 (b) of the settlement agreement that Ms. Bich become a "full member."

Ms. Bich also argues that the Bich Brothers' amendment, in making other changes to the Grenelle operating agreement beyond those specified in § 3 of the settlement agreement, breached that agreement. (NYSCEF No. 46 at 6.) The Bich Brothers respond that although § 3's enumerated items are mandatory, they nonetheless have discretion to make additional amendments outside of § 3. (NYSCEF No. 54 at 15.)

Ms. Bich reasonably expected § 3's terms to be exclusive, especially given § 3 (i). Section 3 (i) provides that "any amendment to its Operating Agreement, will require VB's [Ms. Bich's] vote, plus the votes of two other board members." (NYSCEF No. 2 at 2.) The veto rights Ms. Bich bargained for would be practically meaningless if the Bich Brothers could adopt amendments beyond those agreed-upon. New York courts avoid a construction that makes a contractual provision "meaningless or without force or effect." (*Ronnen v Ajax Elec. Motor Corp.*, 88 NY2d 582, 589 [1996].) The only interpretation that honors § 3 of the settlement agreement and preserves Ms. Bich's veto is one that confines the Bich Brothers to the 12 amendments on which the parties agreed. (See *Ruttenberg v Davidge Data Sys. Corp.*, 215 AD2d 191, 195 [1st Dept 1995] ["An interpretation that gives effect to all terms of an agreement is preferable to one that ignores terms or accords them an unreasonable interpretation."]; *Duane Reade*, 54 AD3d at 140 [reasoning that a practical reading of the parties' words should realize their reasonable expectations].)

The court holds, as a matter of law, that the Bich Brothers are not entitled to a declaration that Grenelle LLC's amended and restated operating agreement is valid and does not breach the settlement agreement. Instead, the court declares in Ms. Bich's favor: Grenelle's amended operating agreement does not comply with the settlement agreement; and the Bich Brothers are therefore in breach of the settlement unless and until they rescind their Grenelle amendment.

III. Whether the Bich Brothers Breached the Implied Covenant of Good Faith and Fair Dealing

The parties each move for summary judgment on Ms. Bich's counterclaim for breach of the implied covenant of good faith and fair dealing. She argues that the Bich Brothers breached the implied covenant by (assertedly) failing to implement the § 3 amendments within a

reasonable time, thereby depriving her of the benefits she bargained for in the settlement. (NYSCEF No. 48 at 8.)

The Bich Brothers respond that there is no evidence of bad faith and that Ms. Bich's breach-of-covenant claim duplicates her breach-of-contract claim. They further argue that Ms. Bich has already received all bargained-for rights in the amended operating agreement. (NYSCEF No. 54 at 9; NYSCEF No. 42 at 21.) The Bich Brothers also argue that Ms. Bich has not suffered damages, highlighting the multiple distributions that Grenelle has made to Ms. Bich since the settlement. (NYSCEF No. 42 at 20.)

The Bich Brothers' arguments with respect to breach and damages are unpersuasive. Grenelle LLC's distributions do not compensate for the other rights Ms. Bich bargained for. The Bich Brothers conditioned her membership and managerial rights on her acceptance of an amended operating agreement that falls short of the terms in the settlement agreement. By creating this condition, the Bich Brothers deprived Ms. Bich of her bargained-for benefits. (*See Cordero v Transamerica Annuity Serv. Corp.*, 39 NY3d 399, 409-410 [2023]; *JLO Dev. Corp v Amalgamated*, 232 AD3d 705, 706-707 [2d Dept 2024] [holding that a party may breach the covenant of good faith and fair dealing when it uses contractual discretion to deprive the other of an agreement's intended benefits].)

Nonetheless, Ms. Bich's breach-of-covenant claim fails because it is based on the same conduct that underlies her breach-of-contract claim. (*See e.g. Logan Advisors, LLC v Patriarch Partners, LLC*, 63 AD3d 440, 443 [1st Dept 2009] [holding that an implied-covenant-of-good-faith-and-fair-dealing claim was properly dismissed as duplicative of a breach of contract claim, because both claims arose from the same facts].) Although Ms. Bich argues that her claim for breach of implied covenant rests on different conduct—unreasonable delay—she offers no factual or legal basis to show that the timing was unreasonable.

The court denies Ms. Bich's request for summary judgment on her counterclaim for breach of the implied covenant, and grants the Bich Brothers' request for summary judgment dismissing that counterclaim.

IV. Whether Specific Performance to Sign Ms. Bich's Proposed Amendment to the Operating Agreement is Warranted

Ms. Bich also seeks summary judgment on her request for a declaration that her proposed amendment is consistent with the settlement agreement and must be executed by the Bich Brothers. (NYSCEF No. 48 at 10.)

The Bich Brothers contend that the settlement agreement gives to them the exclusive right to amend the operating agreement; thus, they say, a court may not compel them to sign Ms. Bich's proposed amendment. They further argue that Ms. Bich's proposed amendment falsely represents her to be member. Section 6.3 of the operating agreement provides that "[a] Transferee . . . may not be a member unless several conditions have been met." (NYSCEF No. 4 at 8; NYSCEF No. 42 at 13.) The Bich Brothers also claim that her proposed amendment lacks necessary updates to tax provisions and basic rules of company governance, such as the timing and calling of regular and special meetings. (NYSCEF No. 42 at 15.)

The Bich Brothers' issue with Ms. Bich's proposed amendment—the lack of tax revisions and governance provisions—is not a deficiency. To the contrary, including these provisions would violate the settlement agreement. That agreement provides that changes should be made to the current operating agreement. (NYSCEF No. 2 at 1.) As discussed above, the only changes that can be made to the operating agreement are those in accordance with the settlement agreement's plain meaning and stipulated terms. (*See e.g. Keller-Goldman*, 149 AD3d at 424.)

Ms. Bich's proposed amendment correctly makes her a member of the Grenelle board. (NYSCEF No. 6 at 1.) Ms. Bich does not need to go through preconditions for membership. The parties agreed in § 3 (b) of the settlement agreement that the operating agreement shall be amended to grant her full membership. (NYSCEF No. 2 at 1.)

That said, the court may not order the Bich Brothers to sign the proposed amendment. Requiring the Bich Brothers to sign the amendment would violate the Grenelle operating agreement, which gives them the right to make changes to the agreement. (NYSCEF No. 2 at 1.) Nonetheless, the court suggests the parties sign a revised version of Ms. Bich's proposed amendment.

If the Bich Brothers move forward with adopting Ms. Bich's proposed amendment, it should be stylistically updated. The court suggests edits, such as removing the terminology of “majority member” and changing the effective date of May 1, 2024, to reflect a date both parties agree upon or the date of full execution of the amendment.

If the Bich Brothers decide not to proceed with a revised version of Ms. Bich's proposed amendment, the Bich Brothers must produce an amendment that aligns with the settlement agreement. The Bich Brothers' amendment must grant Ms. Bich's rights stipulated in § 3 of their settlement, without adding preconditions or provisions outside of those agreed-upon in that section.

The court grants Ms. Bich summary judgment to the extent of declaring that her proposed amendment is consistent with the settlement agreement. The court grants the Bich Brothers summary judgment to the extent of declaring that the Bich Brothers are not *required* to execute Ms. Bich's proposed amendment—but the court nonetheless encourages them to do so.

V. Whether Attorney Fees Are Warranted

Section 9.17 of the operating agreement provides that “[i]n the event of any litigation . . . regarding the rights and obligations under this Agreement, the prevailing party shall be entitled to recover attorneys' fees and court costs in addition to any other relief which may be granted.” (NYSCEF No. 4 at 14.) The Bich Brothers and Ms. Bich do not dispute the meaning of section 9.17. A prevailing party is defined in 9.17 as the party “who receives substantially the relief desired, whether by settlement, summary judgment, judgment, or otherwise.” (*Id.*)

There is no prevailing party, as defined by § 9.17. Neither party obtained the substantive relief required for the status of “prevailing party”: Each party received only part of the relief

sought in this action. Thus, the court denies both parties' requests for attorney fees incurred in this action.

Accordingly, it is

ORDERED that the Bich Brothers' motion for summary judgment (mot seq 001) is granted in part and denied in part; and it is further

ORDERED that Ms. Bich's motion for summary judgment (mot seq 002) is granted in part and denied in part; and it is further

ORDERED that Ms. Bich's counterclaim for breach of the implied covenant of good faith and fair dealing is dismissed, no costs; and it is further

ORDERED that the Bich Brothers' and Ms. Bich's respective requests for an award of attorney fees are denied; and it is further

ORDERED, ADJUDGED, and DECLARED that

(i) the Bich Brothers' amendment to the Grenelle LLC operating agreement does not comply with the parties' settlement agreement;

(ii) the Bich Brothers are in breach of the settlement agreement unless and until they rescind their amendment to the Grenelle LLC operating agreement;

(iii) Ms. Bich's proposed amendment to the Grenelle LLC operating agreement is consistent with the parties' settlement agreement;

(iv) the Bich Brothers are not required to execute Ms. Bich's proposed amendment to the operating agreement in particular; but they will be in breach of the settlement agreement unless and until they adopt an amendment to the operating agreement that is consistent with the settlement, as it is interpreted in this decision;

and it is further

ORDERED that Ms. Bich serve a copy of this order with notice of its entry on all parties.

7/3/2025
DATE

CHECK ONE:

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CASE DISPOSED

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GRANTED

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DENIED

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NON-FINAL DISPOSITION

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GRANTED IN PART

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OTHER

APPLICATION:

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SETTLE ORDER

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SUBMIT ORDER

CHECK IF APPROPRIATE:

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INCLUDES TRANSFER/REASSIGN

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FIDUCIARY APPOINTMENT

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REFERENCE


HON. GERALD LEBOVITZ
J.S.C.