SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK: COMMERCIAL DIVISION PART 45

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ET JV HOLDINGS, LLC, ET BRAND, INC., ETBB LLC, ELIE TAHARI, JEREMEY TAHARI,

Plaintiffs,

- v -

TBH-ASL BSA MEMBER LLC, BLUESTAR ALLIANCE, LLC, JOSEPH GABBAY, RALPH GINDI,

Defendants.

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INDEX NO. 659784/2024

MOTION DATES 03/04/2026, 03/04/2026

MOTION SEQ. NOS. 006 007

DECISION + ORDER ON MOTIONS

HON. ANAR RATHOD PATEL:

The following e-filed documents, listed by NYSCEF document number (Motion 006) 308–441, 558–567, 684, 697–703, 712, 716, 736 were read on this motion to/for JUDGMENT – SUMMARY.

The following e-filed documents, listed by NYSCEF document number (Motion 007) 442–478, 480–512, 568–653, 692–696, 713, 717, 737 were read on this motion to/for JUDGMENT – SUMMARY.

In Motion 006, Plaintiffs/Counterclaim-Defendants ET JV Holdings, LLC, ET Brand, Inc., ETBB LLC ("Elie Buyer"), Elie Tahari ("Elie"), and Jeremey Tahari ("Jeremey") (collectively, the "Elie Parties") move for partial summary judgment against Defendants/Counterclaim Plaintiffs TBH-ASL BSA Member LLC ("Bluestar Member"), Bluestar Alliance, LLC ("BSA"), Joseph Gabbay, and Ralph Gindi (collectively, "Bluestar") as follows: (1) on the First and Seventh Causes of Action contained in the Complaint declaring and adjudging that Elie's December 2, 2024 Notice was effective and directing Bluestar to consummate the buy back transaction pursuant to Section 10.1 of the Amended and Restated Operating Agreement of TBH Brand Holdings LLC ("Operating Agreement"); (2) on the Second and Eighth Causes of Action contained in the Complaint declaring and adjudging that Bluestar is barred from consummating its Pre-Approved Sale under Section 10.3 of the Operating Agreement and enjoining Bluestar from doing so; (3) in the alternative, in the event that the relief set forth in item (1) is denied and the relief sought in item (2) is granted, in accordance with the Ninth Affirmative Defense contained in the Elie Parties' Reply to Bluestar's Counterclaims declaring and adjudging that Elie's second Buy Back Notice, dated December 30, 2024, was effective and that Bluestar is obligated to consummate the buy back transaction pursuant to Section 10.1 of the Operating Agreement; (4) dismissing all remaining Counterclaims contained in Bluestar's Answer; and (5) awarding Elie Members their reasonable attorneys' fees and expenses pursuant to Section 13.11 of the Operating Agreement, with the amount to be fixed by the Court.

In Motion 007, Bluestar moves for summary judgment against the Elie Parties on each of the eight Causes of Action asserted in the Complaint and on the First (declaring the Buy Back Notice is premature and invalid under Section 10.1), Second (breach of contract for refusing to consent to the Pre-Approved Sale pursuant to Section 10.3), and Third (breach of the implied covenant of good faith and fair dealing for refusing to consent to the Pre-Approved Sale) Counterclaims. By So-Ordered Stipulation dated March 2, 2026, Bluestar discontinued with prejudice the Fourth through Seventh Counterclaims, leaving no claims pending against Elie Tahari, Jeremey Tahari, or Elie Buyer. NYSCEF Doc. No. 307.

The Court held oral argument on these motions on July 6, 2026, reserving its decision. *See* NYSCEF Doc. Nos. 736 and 737 (7/6/26 Tr.). This Decision and Order now follows.

This case concerns a house of fashion literally and figuratively divided—a fashion label held in a joint venture whose members are now anything but joined. The parties turn to the Court to resolve the propriety of dueling transactions and therefore, determine the fate and ownership of TBH Brand Holdings, LLC ("TBH" or the "Company"). On one hand, the Elie Parties seek to exercise their contractual right to buy back Bluestar's membership interest in the Company pursuant to Section 10.1 of the Operating Agreement and, on the other hand, Bluestar seeks to exercise its contractual right to sell the Company to an affiliate of TPG Angelo Gordon ("TPG") pursuant to Section 10.3 of the Operating Agreement. The critical feature of the fact pattern is the timing—should the Court determine that the Elie Parties' premature Buy Back Notice is valid, then Bluestar's contemplated sale is gutted. And if it is not valid, then the Court must determine if the Elie Parties are bound to cooperate with the Pre-Approved Sale of the Company to TPG, and perhaps, whether a second, but timely, Buy Back Notice should be deemed effective.

Based upon the evidentiary record presented on these motions for summary judgment, the Court determines that extrinsic evidence establishes that the Buy Back Notice must be served in the 120-day Buy Back Period under Section 10.1. Despite the urging of the Elie Parties, the Court finds that the premature Buy Back Notice is defective under New York law, which applies a strict construction principle to option contracts. As to Section 10.3, the language is unambiguous and the Court has before it sufficient evidence to determine that the contemplated sale violates Section 10.3 because (1) the sale is not for the "entire Company" because the post-sale structure allows Bluestar to retain—at their election—99% of their interest in the Tahari companies and (2) Bluestar's compensation in the form of management fees is prohibited additional consideration in connection with the transaction and in violation of Section 10.3(b)'s requirement that "No Affiliate of any Member shall receive any other consideration other than the purchase price in connection with the Sale Offer transaction." The Court declines Bluestar's invitation to sever the terms of the Pre-Approved Sale that violate Section 10.3 to make it compliant (and salvage the contemplated sale) as it is beyond the province of the Court to re-write the parties' negotiated agreement.

For the reasons set forth herein, the Court grants the Elie Parties' motion (Motion 006) in part, to the extent of finding in the Elie Parties' favor as to the Second and Eighth Causes of Action and dismissing Bluestar's Second and Third Counterclaims. The Court grants Bluestar's motion (Motion 007) in part, to the extent of finding in Bluestar's favor as to the First and Seventh Causes of Action and its First Counterclaim. As to the Elie Parties' request for alternative relief, the Court determines that whether the second Buy Back Notice is valid presents triable issues of fact. The Court reserves its decision as to the Elie Parties' request for reasonable attorneys' fees.

Relevant Factual Background

Elie Tahari is a famed fashion designer and founder of the Tahari brand, holding various trademarks and licenses, including but not limited to Elie Tahari, Tahari, and T Tahari. NYSCEF Doc. No. 443 (Bluestar's Statement of Facts, Motion 007, "BSOF") at ¶ 1; NYSCEF Doc. No. 652 (Elie Parties' Response to BSOF, "ECSOF") at ¶ 1. Elie Buyer is wholly owned by Elie and managed by Elie's son, Jeremey Tahari. ECSOF at ¶ 2. ET JV Holdings, LLC and ET Brand, Inc. are entities affiliated with Elie. ECSOF at ¶ 3. BSA is a brand-management company co-founded by Joseph Gabbay (CEO) and Ralph Gindi (COO) that manages a portfolio of trademarks including the Tahari brand. ECSOF at ¶¶ 4, 6. Bluestar Member owns 50% of two entities, TBH Brand Holdings LLC ("TBH") and TASL Holdings LLC ("TASL"), and acts as the "Day-to-Day Manager" of TBH and TASL. ECSOF at ¶ 5; NYSCEF Doc. No. 440 (Elie Parties' Statement of Facts, Motion 006, "ESOF") at ¶¶ 6, 7; NYSCEF Doc. No. 561 (Bluestar's Response to ESOF, "BCSOF") at ¶¶ 6, 7.

Formation of 2017 Joint Venture and Negotiation of Operating Agreement

In the fall of 2017, Bluestar and Elie began negotiating a joint venture. It is undisputed that Elie Tahari Ltd. and Elie owed money in excess of $30 million to HSBC Bank, which had sued to recover it. ECSOF at ¶ 7. Negotiations lasted several months with Gindi, Gabbay, BSA's general counsel Joseph Sutton, and outside counsel Rustin Paul participating on behalf of Bluestar, and Wayne Markowitz, outside counsel Barry Rutcofsky, accountant Joseph Leshkowitz, and Elie's brother, Avi Tahari, participating on behalf of the Elie Parties. ECSOF at ¶¶ 12–14.

On December 29, 2017, the parties executed the Amended and Restated Operating Agreement of TBH Brand Holdings LLC ("Operating Agreement") and a parallel operating agreement for TASL. NYSCEF Doc. Nos. 449 (TBH Operating Agreement) and 451 (TASL Operating Agreement). Under the resulting structure, TBH was owned 50% by Bluestar Member, 49% by ET JV Holdings, LLC, and 1% by ET Brand, Inc. (together, the "Elie Members"); TASL was owned 50% by Bluestar Member and 50% by ET ASL JV Holdings LLC. ECSOF at ¶¶ 8, 10.

Elie and his businesses contributed their intellectual property in the Tahari and T Tahari trademarks to TBH and the Tahari ASL trademark to TASL, while retaining ownership of the Elie Tahari trademark and licensing it to TBH. ECSOF at ¶ 9. As consideration for entering into the joint venture, Elie and his businesses received $35 million—some of which was used to satisfy their debts to HSBC Bank. ECSOF at ¶ 12.

The relevant provisions of the Operating Agreement in this action are: Section 10.1, which addresses the Elie Parties' Buy Back Option; Section 10.3, which addresses the parties' obligations to cooperate with a Pre-Approved Sale that satisfies certain contractual requirements; and Section 13.11, which provides that in the event of litigation concerning any dispute between the parties, the prevailing party shall be entitled to, among other things, the reasonable attorneys' fees incurred regarding such litigation.

Section 10.1 (Buy Back Option)

The parties agree that a material term of the 2017 negotiations was Elie's right to buy back Bluestar's 50% interest in the joint venture for $50 million, *see, e.g.*, NYSCEF Doc. No. 330 ("Leshkowitz Tr.") at 116:23–117:2 ("it was always known that we would want to buy back the name because that's what Elie always wanted to do. He didn't want anybody else having his name."), but they dispute how the timing mechanics of that right were negotiated, drafted, and ultimately memorialized. As executed, Section 10.1 provides:

> "Between the period commencing on December [29], 2024 and the date that is 120 days after (the 'Buy Back Period'), so long as he (or an Affiliate of his) is a Member at such time, Mr. Elie Tahari, personally, or through an entity which is wholly-owned by Mr. Elie Tahari . . . ('Elie Buyer') shall have the one-time right, by providing written notice to the Bluestar Member ('Buy Back Notice'), to purchase all of the Bluestar Member's Interest in the Company for a purchase price of Fifty Million Dollars ($50,000,000). Within forty-five (45) days of the Buyback Notice, the parties will negotiate promptly in good faith to execute an agreement to effectuate the sale to Elie Buyer, provided that such purchase must be consummated by Elie Buyer within forty-five (45) days of delivery of such Buy Back Notice."[1]

The record establishes the following relevant discussions concerning Section 10.1 during the negotiation of the Operating Agreement.

- On October 20, 2017, Gabbay e-mailed Elie proposing that, "[a]fter 3 years Elie will have the option to by [*sic*] my shares out for $50M in cash. Not before 3 years, and not after 3 years. (meaning, we can't have the option for you to buy us out. After 3 years stand, forever)." NYSCEF Doc. No. 331.

- On October 23, 2017, Gabbay circulated a term sheet providing for a Seller's Buy Back Option on the three-year anniversary of the closing ("not before and not after"), but noting that Bluestar prefers five years. NYSCEF Doc. No. 332.

- On October 24, 2017, Leshkowitz circulated an e-mail to Bluestar proposing that "[t]he buyback right for 50,000,000 will be for a period of 120 days starting with the end of the fourth anniversary of the agreement." NYSCEF Doc. No. 454. In response to this e-mail chain, Sutton attached an updated term sheet and redline indicating that the Buy Back Period will start on the fifth anniversary of closing and run for 120 days. NYSCEF Doc. No. 333.

[1] It is undisputed that, as executed, Section 10.1 applies only to TBH, not TASL (which has no comparable buy back provision). BSOF at ¶¶ 31–35; ECSOF at ¶¶ 31–35.

- On October 27, 2017, the parties executed a term sheet providing for a Seller's Buy Back Option available during a 120-day period beginning on the fifth anniversary of the Closing Date, to purchase Bluestar's 50% share for $50,000,000. NYSCEF Doc. No. 334. The executed term sheet is silent as to notice. *Id.*; *see also* BCSOF at ¶¶ 25–27.

- On November 2, 2017, Bluestar circulated the first draft TBH Operating Agreement, with Section 10.1 titled "Buy Back Option" and providing for the option within a prescribed 120-day period and denoting "TIME BEING OF THE ESSENCE." The provision states, in part, that "Mr. Elie Tahari, personally, shall have the one-time right, by providing written notice to the Bluestar Member ("Buy Back Notice"), to purchase all of the Bluestar Member's Interest in the Company… ." NYSCEF Doc. No. 335. The evidentiary record establishes that the November 2, 2017 draft of the Operating Agreement is the first mention of "notice" and inclusion of the term "Buy Back Notice."

- In subsequent drafts, the language "TIME BEING OF THE ESSENCE" was struck from Section 10.1 twice. NYSCEF Doc. Nos. 336 (11/15/17 E-mail); 337 (11/20/17 E-mail); 338 (11/29/17 E-mail).

- On December 15, 2017, the draft Operating Agreement added the term "Buy Back Period" to Section 10.1. BCSOF ¶ 42.

- Throughout November and December 2017, the parties continued to negotiate and exchange drafts of the Operating Agreement. The drafts show that Section 10.1 remained substantially the same, although the parties augmented the Buy Back Period to 120 days (*e.g.*, from 90 days) and the time in which the buy back purchase must be consummated to 45 days (*e.g.*, from 60 days). *See, e.g.*, NYSCEF Doc. No. 459 (11/8/17 E-mail); 460 (11/15/17 E-mail).

- Ultimately, the parties agreed that the Buy Back Option would become available beginning on the date of the seventh anniversary of the execution of the Operating Agreement. BCSOF at ¶ 45.

Notably, the drafts and contemporaneous discussions do not address whether the parties intended for the notice to be provided or the buy back to be consummated during the Buy Back Period, or whether the delivery of the Buy Back Notice effectuates the exercise of the Buy Back Option. The term "exercise" does not appear in Section 10.1.

Bluestar relies principally on the affirmation of Ralph Gindi and testimony of Wayne Markowitz for the proposition that Bluestar always understood that it was the notice that had to be sent during the Buy Back Period. NYSCEF Doc. No. 447 ("Gindi Aff.") at ¶¶ 15, 24; NYSCEF Doc. No. 320 ("Markowitz Tr.") at 96:20–97:2, 140:17–24. The Elie Parties dispute the competence and admissibility of that evidence, pointing to deposition testimony in which both Gindi and Markowitz stated that they could not recall the specific details of contemporaneous discussions regarding Section 10.1. NYSCEF Doc. No. 318 ("Gindi Tr.") at 35:16–36:6; Markowitz Tr. at 94:23–97:2; 141:12–142:2.

As originally executed, the commencement date of Section 10.1's "Buy Back Period" was left unfilled. On February 27, 2018—roughly two months after execution—Bluestar's outside counsel circulated a version of the agreement with "29" filled into the blank between "December" and "2024" in Section 10.1, and forwarded it to Rutcofsky, who forwarded it to Markowitz. NYSCEF Doc. No. 342 (2/27/18 E-mail). The date of December 29, 2024 is consistent with the parties' contemporaneous drafting and discussions that the Buy Back Period would commence on the seventh anniversary of the closing. *See, e.g.*, NYSCEF Doc. No. 460 (11/15/17 E-mail); Gindi Aff. at ¶ 13.

Section 10.3 (Pre-Approved Sale)

Section 10.3(a) provides that, upon a *bona fide* third-party Sale Offer for the "entire Company" (including TASL) meeting certain "Proceed Requirements" and "Consistent Terms Requirements," and from a purchaser that is not an "Affiliate" of a Member or the Day-to-Day Manager, the Day-to-Day Manager (Bluestar) shall control negotiations, and each Member agrees to consent to and raise no objection to the sale, subject to the stated requirements. Section 10.3(b) (Proceed Requirements) requires a purchase price of at least $140 million (or, if less, an allocation of at least $70 million to the Elie Limited Member); equal form of consideration to each Member; continued Elie Member receipt of 50% of Elie Tahari licensing royalties; and no additional consideration to any Member's Affiliate beyond the purchase price. "Affiliate" is defined as a person or entity with 50% or greater direct or indirect ownership or control.

Relatedly, pursuant to Sections 7.2 and 7.3 of the Operating Agreement, Bluestar serves as "Day-to-Day Manager" of TBH (and, under the TASL agreement, of TASL), with authority over licensing, distribution, IP maintenance and enforcement, books and records, and other day-to-day operations, for which it may receive an annual management fee capped at $1 million combined for both companies.

Sections 10.1 and 10.3 Collide

On November 29, 2024 (the Friday after Thanksgiving), Jeremey e-mailed Elie's assistant directing that a FedEx envelope containing three sub-envelopes—labeled "TAHARI BUY BACK NOTICE," "LETTER," and "ETBB LLC OPERATING AGREEMENT"—be shipped so as to arrive "NOT BEFORE NOR AFTER, AND ONLY ON DECEMBER 1ST," with instructions to photograph the documents and retain a tracking number. NYSCEF Doc. No. 508 (12/2/24 E-mail). At his deposition, Jeremey testified that he had not seen the version of the Operating Agreement with the date filled in, *i.e.*, December 29, 2024, at the time he e-mailed Elie's assistant on November 29. NYSCEF Doc. No. 329 ("Jeremey Tr.") at 19:25–20:14.

On or about December 2, 2024, the Elie Parties transmitted a purported "Buy Back Notice" to Bluestar Member purporting to exercise Elie's right under Section 10.1 ("December 2 Notice"). NYSCEF Doc. No. 631 ("Goldblum Aff.") at ¶ 2. Bluestar contends that the Buy Back Period did not commence until December 29, 2024, rendering the notice approximately four weeks premature. Accordingly, Bluestar rejected the notice *via* letter dated December 3, 2024. NYSCEF Doc. No. 374 (12/3/24 E-mail). The Elie Parties contend that the December 2 Notice was timely because Section 10.1 permits delivery of notice up to forty-five days before the start of the Buy Back Period, provided that closing occurs within that Period. The Buy Back Notice was accompanied by an assignment of membership interests and a purported waiver of the right of first refusal under Section 10.2. Bluestar contends that these materials constitute independent defects in the notice, which the Elie Parties dispute.

It is undisputed that, "[i]mmediately after receiving, ***and only because they received,*** the Buy Back Notice, on or around December 2, 2024, Bluestar's Gindi called Jake Gladstone of TPG" and asked whether TPG was interested in purchasing the Tahari companies for $140 million and provided relevant legal documents thereto. BCSOF at ¶ 96 (*emphasis in original*); BSOF at ¶ 110. Gabbay testified that Bluestar pursued the sale specifically because it had been "put under the gun" by the Buy Back Notice and "exercised [its] right immediately to get maximum value." NYSCEF Doc. No. 316 ("Gabbay Tr.") at 227:7–228:24. Bluestar did not contact any other parties about purchasing the Tahari companies. BCSOF at ¶ 111. Rather, Bluestar believed "that Hilco/TPG could move quickly to conduct the required due diligence to submit a sale offer and negotiate a sale transaction." Gindi Aff. ¶ 37.

Negotiation of Pre-Approved Sale

Between December 2 and December 8, 2024, Bluestar negotiated a proposed sale of interests in TBH and TASL to HBN 140 LLC ("HBN"), a joint venture of TPG and Hilco Inc. (including related entities, "Hilco"), at a $140 million valuation (the "Pre-Approved Sale"). Bluestar and TPG/Hilco engaged in a flurry of e-mail communications regarding the proposed sale during this period and expressed urgency to close the deal by December 28—which is notably the day before the Buy Back Period commenced on December 29. *See, e.g.*, NYSCEF Doc. Nos. 367 (12/2/24 E-mail); 368 (12/2/24 E-mail); 369 (12/2/24 E-mail); 370 (12/2/24 E-mail); 372 (12/3/24 E-mail). Prior to December 2, it is undisputed that Bluestar, TPG, and Hilco did not have any substantive discussions about the Tahari companies. BCSOF at ¶ 82. Likewise, it is undisputed that TPG and Hilco had not conducted any diligence on the Tahari brands prior to December 2, 2024. BCSOF at ¶ 101.

On December 6, 2024, TPG sent a proposal letter to Bluestar offering a cash purchase price of $140 million for all assets and stating that TPG/Hilco "is contemplating offering the members of the Company the right to receive a portion of their consideration in equity interests in the Purchaser." NYSCEF Doc. No. 375 (12/6/24 E-mail). On December 7, 2024, TPG/Hilco circulated the executed proposal letter with slightly revised language regarding the Purchase Price: "Purchaser shall pay a cash purchase price of $140,000,000 for all of the Shares, subject to an agreed holdback amount of up to 10%. At the request of any members of the Company, Purchaser will contemplate offering the members of the Company the right to receive a portion of their consideration in equity interests in the Purchaser." NYSCEF Doc. No. 471 (12/7/24 E-mail).

The following day, Bluestar sent a letter to the Elie Parties advising them of the potential sale to TPG/Hilco and stating that the *bona fide* offer "qualifies as a Sale Offer under our Operating Agreement, and the proposed buyer group has already completed their initial review and told us that their offer terms will comply with the Proceed Requirements and Consistent Terms Requirements under the Operating Agreement." NYSCEF Doc. No. 472 (12/8/24 Letter). The letter goes on to state: "while the buyer group is willing to purchase 100% of our companies (TBH and TASL), they have told us they will consider requests for the rollover of a portion of equity from the current members." *Id*. The parties dispute whether the Elie Parties failed to "cooperate" with this sale process. The Elie Parties assert that they responded through counsel *via* letters dated

December 9, 11, 17, and 20, 2024, disputing the validity of the sale process itself. ECSOF at ¶¶ 33, 45.

In a December 18, 2024 TPG Investment Committee presentation, the transaction analysis contemplates purchasing 50% of the companies for $70 million ($140 million in total), with $70 million of "Rollover Equity"; it is undisputed that the presentation contemplated cash-plus-rollover consideration and referenced the Tahari members' possible rollover. NYSCEF Doc. No. 383; BCSOF at ¶ 114.

On December 26, 2024, Bluestar Member and HBN executed a Membership Interest Purchase Agreement ("MIPA") and a "Sign and Close Agreement," along with ancillary escrow, management, and operating agreements, and sent final transaction documents to the Elie Parties. Under the MIPA, HBN would purchase a minimum of 51% of TBH/TASL, with members (Bluestar Member and Elie Members) permitted to retain up to 49% each *via* a defined "Retention Capacity." NYSCEF Doc. No. 390 (MIPA); BCSOF at ¶¶ 120–122. An earlier MIPA draft contemplated members exchanging equity for equity in an undefined purchaser, *see* NYSCEF Doc. No. 377 at Recital B, before the language shifted to "100% . . . minus the Retained Interests." *Compare* NYSCEF Doc. No. 380 (12/18/24 Sutton E-mail) at 2 *with* 385 (12/23/24 Gindi E-mail) at 7; BCSOF at n. 11. The Elie Parties characterize the MIPA as effectively allowing Bluestar to sell as little as 0.5–1% of its 50% stake while still nominally selling "100% minus Retained Interests." ESOF at ¶ 123. Bluestar does not dispute that if the Elie Parties chose to sell, "the final deal would allow Bluestar to reduce its interest in the Company by just 1%." BCSOF at ¶ 126.

An additional component of the Pre-Approved Sale at issue is whether Bluestar negotiated to receive consideration other than the Purchase Price. The transaction documents and accompanying management agreements appoint Bluestar as Day-to-Day Manager of TBH and TASL for an initial ten-year term with up to five automatic renewals (*i.e.*, 60 years total). The proposed fee structure is 10% of gross revenue in 2025, 15% thereafter, with a $300,000 annual floor. BCSOF at ¶ 132. Applying TPG's "base case" revenue projection of ~$24 million/year (2025–2027), the proposed fee would more than double Bluestar's fee in 2025 (10% × $24M = $2.4M) and more than triple it in 2026–2027 (15% × $24M = $3.6M) versus the current $1 million cap. BCSOF at ¶ 137.

Second Buy Back Notice

On December 30, 2024, the Elie Parties served a second buy back notice ("December 30 Notice"). NYSCEF Doc. No. 437. The parties dispute whether this second notice was properly pleaded and whether, in light of the "one-time" nature of the right conferred by Section 10.1, it may be given effect if the first buy back notice is found to be untimely and, therefore, invalid. BCSOF at ¶¶ 139–140. Further, the relevant language of Section 10.1 states, "For clarity, in the event a Buy Back Notice is not timely delivered to the Bluestar Member or Elie Buyer fails to timely consummate such buy-back (unless such failure is due to a breach of the Bluestar Member's obligations under this Section 10.1) in accordance with this Section 10.1, this Section 10.1 shall be deemed null and void and of no further force and effect."

In their Reply to Counterclaims, the Elie Parties pleaded as their Ninth Defense: "The Bluestar Parties' Counterclaims are barred, in whole or in part, because, in an abundance of caution, Elie served a second Buy Back Notice on the Bluestar Parties on December 30, 2025 [*sic*], that lawfully exercised the Buy Back Option in Section 10.1 of the Operating Agreement." NYSCEF Doc. No. 167 (Reply to Counterclaims) at ¶ 92.

Relevant Procedural History

The Elie Parties commenced this action on December 20, 2024, with the filing of the Summons and Complaint. NYSCEF Doc. No. 1. Bluestar filed its Answer with Counterclaims on December 27, 2024. NYSCEF Doc. No. 14. Thereafter, the Elie Parties moved to dismiss each of Bluestar's Counterclaims (Motion 002) and Bluestar moved for summary judgment on the Elie Parties' First and Second Causes of Action (Motion 003).

On April 8, 2025, the Court held oral argument on Motions 002 and 003. The Court denied both motions. With respect to Section 10.1, the Court held that "there is an ambiguity in the agreement as to what event or events must occur in the denoted time period." NYSCEF Doc. No. 166 ("4/8/25 Tr.") at 67:7–9. The Court determined that genuine issues of material fact existed regarding whether the Pre-Approved Sale complied with Section 10.3. Specifically, the Court required factual discovery on the terms and negotiations of the proposed sale to ascertain its adherence to the Pre-Approved Sale provision's requirements. 4/8/25 Tr. at 69:14–70:11, 70:23–71:7.

Legal Discussion

Under CPLR § 3212, "the proponent of a summary judgment motion must make a *prima facie* showing of entitlement to judgment as a matter of law, tendering sufficient evidence to demonstrate the absence of any material issues of fact." *Alvarez v. Prospect Hosp.*, 68 N.Y.2d 320, 324 (1986) (citations omitted). Where the movant has made such a showing, the burden shifts to the opposing party to demonstrate, with admissible evidence, facts sufficient to require a trial, or summary judgment will be granted. *See Winegrad v. New York Univ. Med. Ctr.*, 64 N.Y.2d 851, 853 (1985). "[M]ere conclusions, expressions of hope or unsubstantiated allegations are insufficient to raise an issue of fact." *Alpine Custom Floors, Inc. v Yurcisin*, 209 A.D.3d 460, 460–461 (1st Dept. 2022). "[S]ummary judgment may be granted as to one or more causes of action, or part thereof, in favor of any one or more parties, to the extent warranted, on such terms as may be just." CPLR § 3212(e).

"The court's role on a motion for summary judgment is to determine whether there is a material factual issue to be tried, not to resolve it. The motion should be granted only if the movant is entitled to judgment as a matter of law. Where different conclusions can reasonably be drawn from the evidence, the motion should be denied." *Sommer v. Fed. Signal Corp.*, 79 N.Y.2d 540, 554–55 (1992) (internal citations and quotations omitted); *see also Quinn v. Krumland*, 179 A.D.2d 448, 449–50 (1st Dept. 1992).

Section 10.1 (Buy Back Option)

Extrinsic Evidence Establishes That The Notice Must Occur In The 120-Day Buy Back Period

The Court previously held that the contractual language of Section 10.1 is sufficiently ambiguous on its face as to what must occur during the 120-day Buy Back Period—notice or purchase—to merit factual discovery. The Elie Parties contend that the operative act during the Buy Back Period is the purchase, or consummation of the buy back. Bluestar contends that the operative act is the notice of the buy back. On these motions for summary judgment, the Court determines that the extrinsic evidence supports one interpretation—that it is the notice that must occur during the Buy Back Period, and there are no issues of fact that remain to be resolved at trial.

The operative language of Section 10.1 is "Between the period commencing on December [29], 2024 and the date that is 120 days after (the 'Buy Back Period') … Mr. Elie Tahari … shall have the one-time right, by providing written notice to the Bluestar Member ('Buy Back Notice'), to purchase all of the Bluestar Member's Interest in the Company … Within forty-five (45) days of the Buyback Notice, the parties will negotiate … to execute an agreement to effectuate the sale to Elie Buyer, provided that such purchase must be consummated by Elie Buyer within forty-five (45) days of delivery of such Buy Back Notice." The Court reiterates that Section 10.1 does not use the term "exercise" (*e.g.*, that the notice is the exercise of the Buy Back Option), state that notice must be given no earlier than a certain date, or define the 120-day period as the Buy Back "Notice" Period.

The Court now considers the extrinsic evidence offered by the parties and to what extent it supports their proposed interpretations of Section 10.1 to resolve any ambiguity. The communications between the parties while negotiating the term sheet and Operating Agreement establish that the parties understood that the Buy Back Option would be available for a defined period of time commencing on the seventh anniversary of the closing of the Operating Agreement—and not a day before or a day after. While the parties negotiated with respect to on which anniversary the Buy Back Period would commence, it was always clear that it would commence on the anniversary of the closing date. The striking of the phrase "TIME BEING OF THE ESSENCE" does not diminish this understanding.

The Elie Parties argue that Section 10.1 unambiguously states that the 120-day period refers to the period that the Buy Back Option is available. If the Court were to find that the language remains ambiguous—which it does, the Elie Parties then rely upon the drafting history of Section 10.1, specifically negotiations leading up to and including the execution of the term sheet, to establish that the parties intended that Elie would have the one-time option to buy out Bluestar's interest during a prescribed period; they concede that the parties did not intend for the option to exist indefinitely. The Elie Parties state that it was not until the drafting of the Operating Agreement that the parties added in "by providing written notice," which grammatically modifies "shall have the one-time right." Therefore, the Elie Parties argue that the only reasonable interpretation is that the purchase is to occur during the Buy Back Period, although they concede that the notice is the "trigger" to exercise the right. NYSCEF Doc. No. 441 at 5. This interpretation, however, overlooks that the 45-day period to then consummate the sale to Elie runs from the date of the notice and therefore, it can fall outside the 120-day period because it is directly anchored to the Buy Back Notice. There is nothing in the language or extrinsic evidence that suggests that the parties discussed or understood that the time to consummate the sale must occur within the 120-day period. If the purchase can occur outside 120-day period, then—as Bluestar argues—the only reasonable interpretation is that the notice is the event that must occur during the 120-day period.

Bluestar's interpretation is supported by the Elie Parties' own actions. The record demonstrates that the Elie Parties reasonably believed that the notice must be delivered on the first day of the 120-day period—and "NOT BEFORE OR AFTER, AND ONLY ON DECEMBER 1ST." NYSCEF Doc. No. 508. Jeremey and his counsel made a mistake in relying on a version of the Operating Agreement that omitted "29," even though the parties do not dispute that the Operating Agreement was executed on December 29, 2017, and the parties negotiated that the Buy Back Period would commence on the seven-year anniversary of the closing—December 29, 2024. The Court does not dispute that what Jeremey and his attorneys—none of whom were involved in the 2017 negotiations, *see* ECSOF at ¶¶ 12–14—believed to be the correct interpretation of Section 10.1 is irrelevant to determining the parties' intentions at the time they were entering into the Operating Agreement. However, this evidence supports the proposition that Bluestar's interpretation of Section 10.1 as requiring the notice to be served during the 120-day period is reasonable—and, in fact, the only reasonable interpretation. The Elie Parties supply no evidence to the contrary. *Theroux v. Resnicow*, 187 A.D.3d 654, 655 (1st Dept. 2020) (internal citations omitted) ("The court properly considered extrinsic evidence to resolve the ambiguity. The extrinsic evidence presented supports plaintiff's interpretation of the offering plan; defendants identified no extrinsic evidence that supports their interpretation."); *Dilek v. Rozenholc*, 167 A.D.3d 437 (1st Dept. 2018) ("However, extrinsic evidence submitted by the Rozenholc defendants in support of their motion for summary judgment resolved any previous ambiguities and eliminated any factual issues.").

The Elie Parties' reliance on the drafting history of Section 10.1 cannot defeat this interpretation because Section 10.1 explicitly sets forth a two-step process tethered to clear time periods to effectuate the sale: provide notice during the 120-day period and close the transaction within 45 days from the date of the Buy Back Notice. In fact, the drafting of Section 10.1 shows that the general structure of the Buy Back Option remained intact while the parties negotiated the time periods: extending the date upon which the Buy Back Period would commence to the seventh anniversary of the closing, augmenting the duration of the Buy Back Period to 120 days, tightening the time period to close the transaction to 45 days. *See, e.g.*, NYSCEF Doc. No. 459 (11/8/17 E-mail); 460 (11/15/17 E-mail). By contrast, the drafting history does not support the notion that the parties intended for the notice to be served up to 45 days prior to the Buy Back Period—there is zero mention or suggestion of such an understanding in the evidentiary record. As Bluestar observes, the drafting history reflects no distinction between notice and the right; it merely suggests that the notice is the "trigger"—which the Elie Parties concede.

Additionally, the Court considers the deposition testimony of individuals who were directly involved in the drafting of the Operating Agreement. Gabbay testified that his understanding is that the Buy Back Notice must be provided between December 29, 2024 through April 28, 2025, and that the 45-day period to consummate the sale could occur after April 28. *See* Gabbay Tr. at 69:14–73:16. Markowitz testified that "there were two provisions. One is 120 days to give notification. Once notification is given, then it's 45 days to consummate the transaction." Markowitz Tr. at 148:4–6; 152:5–8.

Strict Construction Renders The December 2, 2024 Notice As Defective

Notwithstanding that the December 2 Notice was premature, the Elie Parties argue that the early notice to exercise the option should nevertheless be deemed as effective. The Elie Parties argue that (1) there is no New York authority holding that an early notice—with no other deficiencies[2]—is defective; (2) Bluestar had actual notice and suffered no prejudice from the premature notice received approximately four weeks early; and (3) equity should prevail and allow the purchase. The crux of the Elie Parties' arguments is that an early notice is fundamentally different from a late notice. However, accepting such a principle—however logical it may be[3]—contradicts binding New York precedent as to the strict construction of option contracts and the parties' clear intention that the Buy Back Option is available during a defined period and "not before [7] years, and not after [7] years." NYSCEF Doc. No. 331. The drafting history of Section 10.1 absolutely supports that the parties negotiated with precision about when the Buy Back Period would commence. Accordingly, the Court is constrained to determine that the December 2 Notice is defective.

"An option contract is an agreement to hold an offer open; it confers upon the optionee, for consideration paid, the right to purchase at a later date. The most striking feature of the contractual arrangement known as an 'option' is that while the optionor cannot act in derogation of the terms of the option agreement, the optionee is not bound until the option is actually exercised. Thus, until the optionee gives notice of his intent to exercise the option, the optionee is free to accept or reject the terms of the option." *Kaplan v. Lippman*, 75 N.Y.2d 320, 324–25 (1990) (internal

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[2] The Court does not credit Bluestar's arguments that the December 2 Notice, aside from being premature, contained other defects. The notice was sent in a separate envelope and apart from other proposed documents that were identified as subject to further negotiation. NYSCEF Doc. No. 632 (Picture of Envelopes). The notice is clear that Elie is "exercising his right to purchase all of Bluestar Member's Interest in the Company for a purchase price of Fifty Million Dollars ($50,000,000)." The proposed documents in a separate envelope were accompanied by a cover letter that states "Enclosed is the Buy Back Notice exercising my Buy Back Option together with a draft Purchase and Sale Agreement to facilitate the negotiation and execution of the Purchase and Sale Agreement." *See* NYSCEF Doc. Nos. 633 (12/1/24 Notice) and 634 (Letter to Bluestar Member with attachments); ECSOF at ¶¶ 100–101. Bluestar does not demonstrate how the Buy Back Notice is tainted by the inclusion of the proposed documents and/or how providing the Buy Back Notice in such a manner failed to comply with Section 10.1—which only requires that the notice is in written form.

[3] The Court is persuaded somewhat by the Elie Parties's argument that an early notice is different from a late notice, which is served after the right has expired. It would appear that the timely exercise of option contracts is calibrated to a harm that early notice simply does not threaten—the need for commercial certainty. An option grants a right that evaporates if the party holding the option delays beyond the parties' agreed-upon period to exercise the right. If the deadlines passes, the right lapses and the optionor has commercial certainty that said right will not be exercised and it can act freely. By contrast, early notice presents no similar harm to the optionor. Nevertheless, neither the parties nor the Court has identified controlling authority that would allow this Court to find that a four-week deviation from the negotiated option period is immaterial.

citations omitted). "[U]nder New York law, strict adherence to the terms of an option is required, and 'a notice exercising an option is ineffective if it is not given within the time specified.'" *Wells Fargo Bank, Nat. Ass'n v. Davidson Kempner Cap. Mgmt. LLC*, 32 F.Supp.3d 436, 441–42 (S.D.N.Y. 2014) (citing *J.N.A. Realty Corp. v. Cross Bay Chelsea, Inc.*, 42 N.Y.2d 392, 396 (1977)); *see also Urb. Archaeology Ltd. v. Dencorp Invs., Inc.*, 12 A.D.3d 96, 103 (1st Dept. 2004). The Court will address each of the Elie Parties' arguments in turn.

First, while there is no legal authority addressing whether an early notice in the context of option contracts, absent other defects, should be deemed as valid, there is likewise no legal authority that this Court can invoke to reach a determination that strict construction does not apply to premature notices. The absence of controlling authority does not grant this Court license to create new law and/or ignore the strict construction principle applied to option contracts, including that the notice must be provided in the specified time period. *Grunberg v. George Assocs.*, 104 A.D.2d 745, 746 (1st Dept. 1984) ("[I]t is a settled principle of law that a notice exercising an option is ineffective if it is not given within the time specified."); *see also Kaplan v. Lippman*, 75 N.Y.2d at 325 ("[t]he optionee must exercise the option in accordance with its terms within the time and in the manner specified in the option) (internal citation omitted).

Second, the Elie Parties apply a "notice and prejudice standard" in favor of finding that the early notice here should be deemed as effective. *See Kaplan v. Lippman*, 75 N.Y.2d 320; *Baker v. Norman*, 226 A.D.2d 301, 304 (1st Dept. 1996) (citing *Dellicarri v. Hirschfield*, 210 A.D.2d 584, 585 (3d Dept. 1994)) ("Strict compliance with the contract's notice provisions was not required, for defendants do not claim that they did not receive actual notice or that they were in any way prejudiced as a result of this minimal deviation."). The Elie Parties argue that Bluestar was on actual notice that Elie sought to exercise the Buy Back Option under Section 10.1 as of December 2, 2024. There was no prejudice to Bluestar as a result of the early notice because it only pursued a sale of the Company to TPG upon learning of Elie's intent to exercise the option—there was no sale process in play prior to December 2, 2024.

However, the Elie Parties rely upon substantial-compliance cases about the manner of delivering notice (*e.g.*, mail versus facsimile, wrong address, oral instead of written), not about satisfying a precise temporal boundary—negotiated by the parties—that defines when the option right is available. *See Suarez v. Ingalls*, 282 A.D.2d 599, 600 (2d Dept. 2001) (notice valid even though not sent by certified mail); *see also Platinum Equity Advisors, LLC v. SDI, Inc.*, No. 653709/2013, 2016 WL 3221580, at *7 (N.Y. Sup. Ct. 2016) (notice valid even though not signed by the correct individual).

Finally, the Elie Parties argue that the equitable doctrine of *J.N.A. Realty Corp.* should extend beyond the landlord-tenant context because, *inter alia*, "Elie would suffer a grave forfeiture if his buyback were not permitted." NYSCEF Doc. No. 703 (Elie Parties' Reply, Motion 006) at 6. In *J.N.A. Realty*, a commercial tenant, through its own negligence, failed to give its landlord written notice of its intent to renew the lease within the six-month window that the lease required. The tenant had substantially invested in improving the premises, and thus losing the lease meant forfeiting the investment along with the business location. The landlord sought to enforce the lease strictly and recover possession, but the Court of Appeals held that equity may relieve a tenant from such a forfeiture where (1) the failure resulted from negligence, inadvertence, or honest mistake, (2) the tenant would otherwise suffer a forfeiture, and (3) the landlord would not be prejudiced by the delay. *J.N.A. Realty Corp*., 42 N.Y.2d at 394, 398–400. Subsequently, the Court of Appeals has indicated that *J.N.A. Realty* is a "narrow equitable doctrine" and its holding "is restricted to tenants who make 'considerable investment in improvements' to the premises in anticipation of the lease renewal or would lose a considerable amount of . . . customer good will should the lease not be renewed." *Baygold Assocs., Inc. v. Congregation Yetev Lev of Monsey, Inc.*, 19 N.Y.3d 223, 228 (2012). The Elie Parties cite no precedent to extend the equitable doctrine articulated in *J.N.A. Realty Corp.*, which involved tangible improvements to real property and loss of a physical location, to an options contract involving membership interests.

Section 10.3 (Pre-Approved Sale)

The Court previously held that whether the Pre-Approved Sale complies with the requirements set forth in Section 10.3 merits factual discovery. On the instant motions, the Elie Parties argue that the proposed sale violates Section 10.3 because: (1) the final Pre-Approved Sale is not for the "entire Company" because the "voluntary rollover" term allows for a retention of equity; (2) Bluestar negotiated to receive additional consideration "in connection with the Sale" in the form of management fees; and (3) the sales process demonstrates that Bluestar did not receive a *bona fide* offer for the Company. Bluestar rebuts that (1) while the initial offer must be for entire Company, the final, agreed-upon sale does not; (2) the management fees do not constitute additional consideration "in connection with the Sale"; and (3) Bluestar did receive a *bona fide* offer for the Company. Because each of Section 10.3's Pre-Approved Sale conditions operate independently, a defect as to any of these disputed terms is fatal to the proposed sale. For purposes of this Decision and Order, the Court addresses these first two arguments and resolves them in the Elie Parties' favor. Accordingly, the Court need not reach the third argument (*i.e.*, *bona fide* offer).

<u>Section 10.3 Requires The Final Pre-Approved Sale To Be For The Entire Company</u>

As a threshold matter, the parties disagree as to whether Section 10.3 requires that the initial offer and the final sale are for the "entire Company." Notably, the language draws no distinction between the initial offer and final sale; it defines an Approved Sale and allows Bluestar, "on behalf of the Company," to negotiate to complete such Approved Sale. The Court finds that the contractual language is clear in defining Approved Sale as one that meets specific, agreed-upon criteria both in the form of the offer and sale. This reading is consistent with the drafting history of Section 10.3 and is the only reasonable interpretation. It would be utterly non-sensical that Bluestar could negotiate a final sale that bears no resemblance to the initial offer based upon the clear contractual terms in Section 10.3 and use of the defined term "Approved Sale" throughout Section 10.3.

Section 10.3 states, in relevant part, that "[i]n the event that … a Member receives … a bona-fide offer for the sale of the entire Company … by merger, consolidation, sale of assets, sale of interests or otherwise (a '**Sale Offer**')" "for a purchase price satisfying the Proceed Requirements and Consistent Terms Requirements below (an '**Approved Sale**'), the Day-to-Day Manager (on behalf of the Company) shall control the negotiations" and "consummate such Approved Sale." Section 10.3 further states that if the sale is a sale of all or substantially all of the outstanding interests of the Company, each holder of interests shall sell all of such Member's Interests on the terms set forth in the Sale Offer. The Proceed Requirements mandate that the sale is for at least $140,000,000, payable in immediately available funds (subject to the Permissible

Holdback). *Id*. Alternatively, the Member presenting the offer to the Company may offer to allocate at least $70,000,000 to the other party if the purchase price is less than $140,000,000 and each Member shall be entitled to receive the same form of consideration. *Id*. The Consistent Terms Requirements mandate that no more than 10% of the purchase price be placed in escrow or otherwise held back. *Id*.

Bluestar contends that while the initial offer must be for the entire Company, as the Day-to-Day Manager, Bluestar may negotiate a final sale of less than the entire Company if it complies with the Proceed Requirements and Consistent Terms Requirements. Bluestar argues: (1) neither the Proceeds Requirements or the Consistent Terms Requirements require that the final sale be for the entire Company, (2) the last clause of Section 10.3(a) starting with "[i]f such Approved Sale is structured as a sale of all or substantially all of outstanding interests" means that the sale can be for less than the entire Company, and (3) the Elie Parties' interpretation would hamstring Bluestar from negotiating more favorable terms. Each of these arguments fail.

"In New York, agreements negotiated at arm's length by sophisticated, counseled parties are generally enforced according to their plain language pursuant to our strong public policy favoring freedom of contract." *159 MP Corp. v. Redbridge Bedford, LLC*, 33 N.Y.3d 353, 356 (2019). Courts should "construe the agreements so as to give full meaning and effect to the material provisions." *Excess Ins. Co. Ltd. v Factory Mut. Ins. Co.*, 3 N.Y.3d 577, 582 (2004). The Court should not extrapolate distinct provisions out of the agreement to determine intent; rather, the Court should consider the purpose of the entire agreement "in the context of the parties' relationship and circumstances." *Matter of Riconda*, 90 N.Y.2d 733, 738 (1997). "Whether or not a writing is ambiguous is a question of law to be resolved by the courts." *W.W.W. Assocs., Inc. v. Giancontieri*, 77 N.Y.2d 157 (1990).

First, Section 10.3 unambiguously requires that the Pre-Approved Sale is for the entire Company. Section 10.3(a) requires that an Approved Sale must satisfy four criteria: (1) a *bona fide* offer for the sale of the entire Company ("Sale Offer"); (2) from a party that is not an Affiliate[4] of a Member; and (3) for a purchase price satisfying the Proceed Requirements and (4) Consistent Terms Requirements regarding Holdbacks. The sentence structure of Section 10.3(a) supports this interpretation, as the definition of Approved Sale captures everything preceding it. If Bluestar was not required to negotiate the Pre-Approved Sale pursuant to these criteria, the purpose of defining an Approved Sale would be defeated. In other words, if Bluestar was authorized to negotiate a sale for 40% of the Company after receiving an offer for 100% of the Company, mandating an initial offer for the entire Company would be futile. As the Elie parties argue, if only the initial offer had to be for the entire Company, then Bluestar could solicit an offer for the entire Company and then, in the same call, negotiate to keep some or nearly all of its equity.

This reading is also consistent with the parties' understanding of Section 10.3 during negotiations of the Agreement—that it contemplates the sale of "the whole business of the Company." *See* BCSOF at ¶¶ 38, 50. Both Markowitz and Gabbay provided testimony consistent

[4] The parties do not dispute that Bluestar is not an Affiliate of HBN 140. *See* NYSCEF Doc. Nos. 653 at 17–23 and 692 at 11.

with this understanding, and drew no distinction between the initial offer and final sale. Markowitz Tr. at 172:4–6; Gabbay Tr. at 146:22–147:22.

Further, Bluestar provides no support for its interpretation that it may negotiate a final sale of less than the entire Company as long as it satisfies the Proceed Requirements and Consistent Terms Requirements. This reading contradicts the plain meaning of the provision. *See Greenfield v. Philles Recs., Inc.*, 98 N.Y.2d 562, 569 (2002) ("a written agreement that is complete, clear and unambiguous on its face must be enforced according to the plain meaning of its terms"). The Court declines to interpret Section 10.3 in such a manner. *See Kolmar Americas, Inc. v. Bioversal Inc.*, 89 A.D.3d 493, 494 (1st Dept. 2011) (courts should abide by the "cardinal rule of construction that a court adopt an interpretation that renders no portion of the contract meaningless"); *see also HSBC Bank USA v. Nat'l Equity Corp.*, 279 A.D.2d 251, 253 (1st Dept. 2001) ("It is an elementary rule of contract construction that clauses of a contract should be read together contextually in order to give them meaning").

Second, Bluestar's attempt to contort the "if" clause likewise fails. The Court agrees with the Elie Parties that this language distinguishes a sale of interests from the other permissible sale structures set forth by the first sentence of Section 10.3(a). Bluestar's reading of the language ignores these permissible structures. The "if" identifies which of the structures trigger the obligation of the Members to tender their interests. The "substantially all" language acts as a qualifier in the event that a sale is for the entire Company minus a fractional residuum. Any other reading would put this clause in direct conflict with the definitional language that opens the section, and courts do not construe adjoining provisions to contradict one another where a harmonious reading is available. *Beal Sav. Bank v. Sommer*, 8 N.Y.3d 318, 324–25 (2007).

Finally, Bluestar's argument that it would not be able to negotiate more favorable terms if the Approved Sale could not deviate from the Sale Offer falls flat. Bluestar could negotiate a higher price, alternative structures, permissible holdbacks, royalties, or leverage other potential buyers—and all of these terms are in addition to the final terms of the agreement such as warranties, tax treatment, indemnification etc. *See* 7/6/26 Tr. at 27:3–13.

<u>The Pre-Approved Sale Is Not For The "Entire Company"</u>

Although Bluestar's primary contention is that Section 10.3 does not require the Pre-Approved Sale to be for the entire Company, in the alternative it argues that the Pre-Approved Sale complies with Section 10.3 because a "voluntary rollover" of equity is not prohibited. In opposition, the Elie Parties maintain that the Pre-Approved Sale is not structured as a "voluntary rollover" because it provides for a retention of equity in the Company—which Bluestar concedes. *See* 7/6/26 Tr. at 22:12–21. The Court agrees based, in part, on the undisputed fact that Bluestar can retain up to 99% of its current 50% equity interest in the Company.

While Bluestar argues that this sale was structured to include a "voluntary rollover," here, the Members have the option to retain their respective interests of the same entity, governed by the same agreement. Specifically, Recital C of the MIPA provides that HBN "desires to purchase from the [Members], one hundred percent (100%) of the Interests of the Target Companies, *minus* the Retained Interests." The MIPA defines Retained Interests as "the percentage of the Interests retained by the Seller Parties, subject to the Retention Capacity, as set furth [*sic*] on Exhibit B."

Retention Capacity is defined as "for each [Member], a percentage up to forty nine percent (49%) of the Interests held by such Seller Party, provided, that, to the extent a Seller Party elects to retain less than forty nine percent (49%) of their Interests, the other Seller Parties may elect to retain such non-retained amounts."

Therefore, subject to each Members' decision to retain their interests, HBN could potentially acquire only 51% of the Company if one Member decides to sell their entire portion and the other elects to retain such amount. A sale of this nature is not one for the entire Company as required by Section 10.3. Further, a transaction under which a Member may reduce its Interest from 50% to 49% would conflict with the clause requiring all Members to sell "all or substantially all of such Member's Interests."

Bluestar and HBN's contemporaneous characterization of the Pre-Approved Sale further confirms that it was not for the entire Company. From the very first conversation about a sale of the Company, Bluestar told HBN that there was an opportunity for HBN to purchase the entire brand or an interest in the brand and that Bluestar was open to retaining equity in the Company. NYSCEF Doc. No. 323 ("Gladstone Tr.") at 46:9–17; Gindi Tr. at 115:25–116:10. At all relevant times, HBN maintained the possibility of acquiring less than the entire Company by presenting and modeling both scenarios in which either (1) HBN would purchase the entire Company or (2) it would be "purchasing [50%] of the Company for $70mm." NYSCEF Doc. No. 383 at 4; Gladstone Tr. at 165:14–167:20; NYSCEF Doc. No. 321 ("Kaup Tr.") at 190:20–193:2; NYSCEF Doc. No. 380 at 2–3. The final transaction documentation confirms that the parties anticipated Bluestar retaining interest in the Company after the purchase. In the proposed Second Amended and Restated Operating Agreement following the transaction, Bluestar is listed as a Member. NYSCEF Doc. No. 395 at § 3.2, Ex. A. Additionally, various Bluestar and Hilco senior officers referred to the Pre-Approved Sale as a buyout by Bluestar of the Elie Parties' interest in the Company. Gindi Tr. at 117:17–21, 192:7–16; NYSCEF Doc. No. 325 ("Hecktman Tr.") at 7:2–4, 27:7–11, 33:22–34:9, 42:23–43:19; NYSCEF Doc. No. 314 ("Dayan Tr.") at 82:4–10, 18–22; Kaup Tr. at 54:20–55:2.

<u>The Proposed Sale Allows Bluestar To Receive Additional Consideration</u>

The Elie Parties argue that the Pre-Approved Sale violates Section 10.3(b) because Bluestar will receive other consideration, in the form of management fees as Day-to-Day Manager, "in connection with the Sale Offer." Bluestar rebuts that the only consideration it stands to receive is the purchase price, and the compensation derived from its future position as Day-to-Day Manager is not part of the consideration for the sale. Bluestar argues that it is merely continuing in its current role and will receive market fees in exchange for services. The Court determines that the contractual language is sufficiently broad to encompass the management fees at issue and the record establishes that the parties specifically negotiated for Bluestar to receive management fees "in connection with" the instant transaction—the quantum of fees and whether it is a continuation of a current role is irrelevant.

Pursuant to the proposed Second Amended and Restated Operating Agreement, Bluestar and HBN negotiated that Bluestar would act as Day-to-Day manager of the Company following the sale. NYSCEF Doc. No. 395 at § 1.6(q); Gladstone Tr. at 71:5–72:5; Kaup Tr. at 61:2–11, 75:11–23. On December 26, 2024, Bluestar sent the Elie Parties the final sale documents which included the MIPA, Second Amended and Restated Operating Agreement, and management agreements for TBH and TASL. NYSCEF Doc. No. 389. In fact, the MIPA includes the management agreements within the definition of "Transaction Documents." MIPA at § 1.1; NYSCEF Doc. Nos. 393 and 394. Under the management agreements, Bluestar could be appointed for up to 60 years and paid an annual management fee calculated as 10% in 2025 and 15% thereafter of the respective companies' gross revenue from operations for each fiscal year with a $300,000 annual floor. NYSCEF Doc. No. 393 at § 4; NYSCEF Doc. No. 394 at § 4. In its current role as the Day-to-Day Manager, Bluestar is compensated with an annual management fee capped at $1 million. Operating Agreement at §§ 7.3.1, 7.3.2. Under the new management arrangement, based on the "base case" of the respective companies' gross revenue from operations, Bluestar would more than double or triple its fees well above the current $1 million cap. BCSOF at ¶¶ 132–137. The record demonstrates that Bluestar and HBN admit that they likely could not have reached the $140 million valuation without Bluestar staying on as Day-to-Day Manager following the sale. Gindi Tr. at 118:10–25; Gladstone Tr. at 71:5–72:5. Therefore, it was a material term to their agreement.

The contractual language (*i.e.*, "other consideration" and "in connection with") broadly includes all other forms of consideration, which the Court reads to include, *inter alia*, the management fees that Bluestar stands to gain pursuant to the Pre-Approved Sale. *See Regal Const. Corp. v. Nat'l Union Fire Ins. Co. of Pittsburgh, PA*, 15 N.Y.3d 34, 38 (2010) (contractual language extending coverage to liability "arising out of" a party's operations is to be interpreted broadly, to mean "originating from, incident to, or having connection with," and requires only "some causal relationship between the injury and the risk for which coverage is provided") (quoting *Maroney v. N.Y. Cent. Mut. Fire Ins. Co.*, 5 N.Y.3d 467, 472 (2005). Further, the parties treated the management agreements as part of the suite of transaction documents and therefore, the management arrangement as a material term of the deal. Bluestar does not dispute the math and that it will derive monetary compensation in addition to the purchase price under the transaction documents.

<u>The Court Will Not Sever The Terms of the Deal to Make it Compliant</u>

Finally, Bluestar asks this Court to sever the terms of the proposed sale that do not comply with the requirements set forth in Section 10.3. A court may not, under the guise of interpretation, rewrite the parties' bargain or supply terms they did not adopt. *Reiss v Financial Performance Corp.*, 97 N.Y.2d 195, 199 (2001); *Rowe v Great Atl. & Pac. Tea Co.*, 46 N.Y.2d 62, 72 (1978). Nor may a court relieve a sophisticated party of the consequences of a structure it chose. *Vermont Teddy Bear*, 1 N.Y.3d at 475. Here, the Pre-Approved Sale negotiated by Bluestar and the Buyer did not satisfy Section 10.3's carefully defined terms, and this Court will not rewrite the bargain to supply the compliance that is lacking.

Accordingly, the Court finds that the Pre-Approved Sale violates Section 10.3 of the Operating Agreement. Because the Court finds that the Pre-Approved Sale violates Section 10.3, Bluestar's Second and Third Counterclaims for breach of contract and breach of the implied covenant of good faith and fair dealing against the Elie Parties for refusing to consent to the Pre-Approved Sale are dismissed.

Second Buy Back Notice

In the alternative, the Elie Parties ask that if the Court finds that the December 2 Notice is invalid and the Pre-Approved Sale violated Section 10.3, that the Court deem the December 30 Notice to be timely and effective. Bluestar advances three arguments in opposition: (1) the Second Buy Back Notice was not pled in the Complaint; (2) the Buy Back Option is a "one-time right" under Section 10.1; and (3) because the December 2 Notice was not "timely delivered," Section 10.1 becomes "null and void." Neither party devotes much real estate to this issue in their briefs nor do they proffer any extrinsic evidence in support of their respective contractual interpretations of the relevant language in Section 10.1. Accordingly, and pursuant to the reasons set forth below, the Court determines that whether the December 30 Notice is valid and should be given effect presents triable issues of fact and therefore, cannot be resolved on summary judgment.

The Court does not credit Bluestar's argument that the Elie Parties failed to plead the relief based upon the December 30 Notice. The Elie Parties asserted the December 30 Notice as an affirmative defense in their Reply to Counterclaims: "The Bluestar Parties' Counterclaims are barred, in whole or in part, because, in an abundance of caution, Elie served a second Buy Back Notice on the Bluestar Parties on December 30, 2025, that lawfully exercised the Buy Back Option in Section 10.1 of the Operating Agreement." NYSCEF Doc. No. 167 (Reply to Counterclaims) at ¶ 92. Accordingly, the Elie Parties are permitted to seek summary judgment on their Ninth Affirmative Defense. CPLR 3212(b) ("The motion shall be granted if, upon all the papers and proof submitted, the cause of action or defense shall be established sufficiently to warrant the court as a matter of law in directing judgment in favor of any party.").

Turning to the relevant contractual language, which is as follows: "Mr. Elie Tahari … shall have the one-time right, by providing written notice to the Bluestar Member ('Buy Back Notice'), to purchase all of the Bluestar Member's Interest in the Company," and "For clarity, in the event a Buy Back Notice is not timely delivered to the Bluestar Member or Elie Buyer fails to timely consummate such buy-back (unless such failure is due to a breach of the Bluestar Member's obligations under this Section 10.1) in accordance with this Section 10.1, this Section 10.1 shall be deemed null and void and of no further force and effect."

The Court has determined that the notice must occur during the Buy Back Period to be valid and therefore the term "Buy Back Notice" necessarily refers to a notice served during the Buy Back Period. Therefore, by definition, the "one-time right" triggered by the Buy Back Notice exists during the Buy Back Period, and Elie can only seek to use the Buy Back Option once during the Buy Back Period. Based upon this reading, the December 2 Notice does not invoke the "one-time right," and is a nullity—as the Elie Parties argue.

However, the "For clarity" clause and its use of the defined phrase "Buy Back Notice" presents a notable ambiguity with respect to whether "timely delivered" encompasses a notice outside the Buy Back Period, let alone a premature notice. On one hand, because the December 2 Notice does not satisfy the definition of Buy Back Notice, it cannot trigger the "For clarity" clause. The Buy Back Notice must be served during the Buy Back Period, and be timely; any notice served outside the Buy Back Period is untimely. Thus, the phrase "in the event that the Buy Back Notice is not timely delivered" has no meaning and could never be triggered. Such a reading runs contrary to the settled principle that contracts must be read to give reasonable effect to every provision and not render any language as surplusage. *Corhill Corp. v. S. D. Plants, Inc.*, 9 N.Y.2d 595, 599 (1961) ("It is a cardinal rule of construction that a court should not 'adopt an interpretation' which will operate to leave a 'provision of a contract ... without force and effect'") (internal citation omitted); *see also Beal Sav. Bank v. Sommer*, 8 N.Y.3d at 324. On the other hand, Bluestar's argument rests on the notion that any written notice by Elie—early or late—to invoke the Buy Back right triggers the "one-time right" and "For clarity" clause, but such an interpretation disregards that Buy Back Notice is a defined term.

Because the meaning of the "For clarity" clause is ambiguous, the Court must look to other clauses in the agreement and/or extrinsic evidence to ascertain the parties' intent. The parties supply no argument or evidence to support their proposed interpretation of this language, and accordingly, the Court determines that the validity of the December 30 Notice cannot be resolved on these motions.

Attorneys' Fees

The Court reserves its decision as to the Elie Parties' request for attorneys' fees as neither party proffers any argument thereto, and certain claims remain outstanding.[5]

* * *

The Court has considered the parties' remaining contentions and finds them to be unavailing.

Accordingly, it is hereby

ORDERED that the Elie Parties' motion for summary judgment (Mot. Seq. No. 006) is hereby GRANTED, in part, to the extent that the Court finds in favor of Plaintiffs/Counterclaim-Defendants as to the Second and Eighth Causes of Action and Defendants' Second and Third Counterclaims are dismissed, and is otherwise DENIED; and it is further

ORDERED that Bluestar's motion for summary judgment (Mot. Seq. No. 007) is hereby GRANTED, in part, to the extent that the Court finds in favor of Defendants/Counterclaim Plaintiffs as to the First and Seventh Causes of Action and its First Counterclaim, and is otherwise DENIED; and it is further

ORDERED that the parties shall appear for a Pre-Trial Conference on **December 10, 2026, at 10:00 a.m.** in Courtroom 428, and comply with Part 45 Practices at Section XI.C.; and it is further

[INTENTIONALLY LEFT BLANK]

[5] Neither party advances any meaningful arguments on these motions with respect to the Third through Sixth Causes of Action.

ORDERED that the Court reserves its decision as to Plaintiffs' request for reasonable attorneys' fees.

The foregoing constitutes the Decision and Order of this Court.

9/8/2026
DATE

A. R. Patel
ANAR RATHOD PATEL, A.J.S.C.

CHECK ONE:	☐	**CASE DISPOSED**			X	**NON-FINAL DISPOSITION**		
	☐	**GRANTED**	☐	**DENIED**	X	**GRANTED IN PART**	☐	**OTHER**
APPLICATION:	☐	**SETTLE ORDER**			☐	**SUBMIT ORDER**		
CHECK IF APPROPRIATE:	☐	**INCLUDES TRANSFER/REASSIGN**			☐	**FIDUCIARY APPOINTMENT**	☐	**REFERENCE**