Supreme Court of the State of New York
Appellate Division, First Judicial Department

Kapnick, J.P., Rosado, O'Neill Levy, Parker-Raso, JJ.

7437 JAMES SPANO et al.,
Plaintiffs-Appellants,

Index No. 652529/25
Case No. 2025-06372

-against-

SOLAR-FI ADVISOR, LLC, et al.,
Defendants-Respondents.

Moritt Hock & Hamroff, LLP, Garden City (Daniel E. Lust of counsel), for appellants.

Tesser & Cohen, New York (Danielle Cohen of counsel), for Solar-Fi Advisor, LLC, Brian Sidman and Bas Sol-Reit Manager, LLC, respondents.

Foley & Lardner LLP, New York (Christopher J. McNamara of counsel), for Kevin Adler, Allen Funk, Afi Solar Capital Solutions, LLC, respondents.

Order, Supreme Court, New York County (Anar R. Patel, J.), entered on or about September 30, 2025, which granted defendants' motions to dismiss the amended complaint with prejudice, unanimously affirmed, without costs.

The amended complaint asserted causes of action sounding in breach of contract, breach of the implied covenant of good faith and fair dealing, fraud, and unjust enrichment, all arising out of a reverse triangular merger in which Sol-REIT Advisors, LLC became a wholly-owned subsidiary of Red Oak Advisors, LLC.

The amended complaint failed to state a viable breach of contract claim against the signatory defendants. The documentary evidence conclusively established that under the operating agreement, "any merger" had to be approved by only a majority vote. Plaintiffs' reliance on unanimous-consent provisions governing the "admission of a

new member" was misplaced, as there is no basis for reading this provision to limit Section 5.1.11.1's merger approval provision, and the documents further demonstrate that the merger did not constitute the admission of a new member within the meaning of those provisions. Under applicable Delaware law, defendants' construction is the only reasonable interpretation of the contract (*see VLIW Tech., LLC v Hewlett-Packard Co.*, 840 A2d 606, 615 [Del 2003]), and dismissal under CPLR 3211(a)(1) was thus proper.

The court also properly dismissed the claim for breach of the implied covenant of good faith and fair dealing. Plaintiffs argue that defendants acted in bad faith by using the restructuring mechanisms to frustrate plaintiffs' contractual rights and expectations, citing *AEA Middle Mkt. Debt Funding LLC v Marblegate Asset Mgt., LLC* (214 AD3d 111, 132-133 [1st Dept 2023]). However, plaintiffs cite no contractual benefit akin to the right to a pro rata distribution in *AEA Middle Mkt.* that would have given them the reasonable expectation that a majority of members would not exercise their discretion to undertake a reverse triangular merger transaction that resulted in plaintiffs' elimination from the company.

Dismissal of the unjust enrichment and fraud claims was likewise proper. The unjust enrichment allegations—principally concerning alleged diversion of Sol-REIT assets and unauthorized use of plaintiff James Spano's image—were vague, conclusory, and derivative of rights governed by the operating agreement. As to fraud, plaintiffs' narrowed theory—that defendants Kevin Adler and Brian Sidman falsely denied forming Sol-EQUITY, which they used for the diversion of Sol-REIT assets—was based on vague allegations concerning the purported diversion of assets and any resulting injury that were insufficient to satisfy the fraud pleading requirements.

The court also correctly determined that the amended complaint did not include allegations of domination and abuse of the corporate form adequate to pierce the corporate veil so as to allow the claims to be asserted against the individual defendants (*see S.M. v Madura*, 223 AD3d 486, 487 [1st Dept 2024]).

Finally, dismissal of the amended complaint with prejudice was appropriate. Plaintiffs fail to identify any new theories or facts that they could now add that would provide a valid basis for their claims, and it is clear that further repleading of the claims would be futile (*see Izhaky v Izhaky*, 215 AD3d 588, 589 [1st Dept 2023]).

We have considered plaintiffs' remaining arguments and find them unavailing.

THIS CONSTITUTES THE DECISION AND ORDER
OF THE SUPREME COURT, APPELLATE DIVISION, FIRST DEPARTMENT.

ENTERED: November 5, 2026



Susanna Molina Rojas
Clerk of the Court