IN THE SUPERIOR COURT OF THE STATE OF DELAWARE

Lynn Tilton and Octaluna III, LLC,	)	
	)	
Plaintiffs,	)	
	)	
v.	)	C.A. No. N23C-02-088 SKR CCLD
	)	
Stila Styles, LLC,	)	
	)	
Defendant.	)	

Submitted: April 10, 2025
Decided: July 22, 2025

Upon Plaintiffs' Motion for Summary Judgment
DENIED in part, GRANTED in part

Upon Defendant's Motion for Summary Judgment
DENIED

MEMORANDUM OPINION AND ORDER

Robert K. Beste, Esq., Julie M. O'Dell, Esq., Jason Z. Miller, Esq., SMITH, KATZENSTEIN JENKINS LLP, Wilmington, Delaware, Monica Loseman, Esq., GIBSON, DUNN & CRUTCHER LLP, Denver, Colorado, Akiva Shapiro, Esq., Mary Beth Maloney, Esq., Carson Whitehurst, Esq., GIBSON, DUNN & CRUTCHER LLP, New York, New York. *Attorneys for Plaintiffs Lynn Tilton and Octaluna III, LLC*.

Daniel B. Rath, Esq., Rebecca L. Butcher, Esq., Jennifer L. Cree, Esq., LANDIS RATH & COBB, LLP, Wilmington, Delaware, David Dunn, Esq., David R. Michaeli, Esq., Matthew Ducharme, Esq., HOGAN LOVELLS US LLP, New York, New York. *Attorneys for Defendant Stila Styles, LLC*.

RENNIE, J.

I. INTRODUCTION

In this action, Plaintiffs Lynn Tilton ("Tilton"), and her controlled entity Octaluna III, LLC ("Octaluna"), sued Defendant Stila Styles, LLC ("Stila" or the "Company"), for breach of the Limited Liability Company Agreement that governs Stila's operation (the "LLC Agreement").[1] During all relevant periods, Octaluna controlled Stila through non-party Zohar III Limited ("Zohar III"), a disregarded entity in which Octaluna owned 100% of the preferential shares.[2] Plaintiffs argue that under the LLC Agreement, Stila owes $21.8 million in deferred tax payments made on the Company's behalf for tax years 2009-2015 (the "Tax Distributions").[3] Tilton was Stila's sole Manager during that period.[4] Plaintiffs contend that while Manager of both Stila and Octaluna, Tilton entered into a series of non-written deferral agreements (the "Deferral Agreements").[5] Under the Deferral Agreements, Octaluna allegedly agreed to defer recoupment of the Tax Distributions until the Company had sufficient working capital.[6]

In 2018 Zohar III declared bankruptcy.[7] Zohar III, its creditors, and Tilton entered an approved settlement which provided for the Company's sale (the

[1] *See* Complaint (hereafter "Compl.") ¶¶ 1-12, 37-52 (D.I. 1).
[2] *Zohar III Limited v. Stila Styles, LLC*, 2022 WL 1744003, at *2 (Del. Ch. May 31, 2022); *Tilton v. Stila Styles, LLC*, 2023 WL 6134638, at *1-2 (Del. Super. Sept. 19, 2023).
[3] *See* Compl. ¶¶ 1-12, 18-24, 37-44.
[4] *Zohar III*, 2022 WL 1744003, at *2; *Tilton*, 2023 WL 6134638, at *1-2.
[5] Compl. ¶¶ 4-5, 21-23, 40-41.
[6] *Id.* ¶¶ 4-5, 21-23.
[7] *See generally In re Zohar III, Corp.*, 631 B.R. 133, 150-51 (Bankr. D. Del. 2021).

"Bankruptcy Plan").[8] In 2021, Zohar III's creditors removed Tilton as Stila's manager.[9] Tilton then requested payment of the Tax Distributions.[10] The bankruptcy court concluded that it only had authority to order the Company's sale.[11] Plaintiffs commenced this suit to recover the Tax Distributions.[12]

After limited discovery,[13] Stila filed a Motion for Summary Judgment ("Stila's Motion").[14] Stila's Motion argues that Plaintiffs' breach claim is time-barred, because discovery revealed no valid Deferral Agreements exist.[15] Independently, Stila argues that the Bankruptcy Plan precludes Plaintiffs' recovery of the Tax Distributions.[16] Plaintiffs reject those contentions and request summary judgment ordering Stila to pay the Tax Distributions ("Plaintiffs' Motion" together with the Stila Motion, the "Motions").[17] For the reasons discussed below, the Court **GRANTS** in part, **DENIES** in part Plaintiffs' Motion and **DENIES** Stila's Motion.

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[8] *See* Opening Brief in Support of Defendant Stila Styles, LLC's Motion for Summary Judgment (hereafter "DMSJ"), Ex. X, Ex. 1 (hereafter "Bankruptcy Plan") (D.I. 80).
[9] *Zohar III*, 2022 WL 1744003, at *1-2, 4, 6. Tilton challenged her removal as improper, but the Delaware Court of Chancery rejected her claim. *Id.* at *11-16.
[10] *Tilton*, 2023 WL 6134638, at *2.
[11] *Id.*
[12] *See generally* Compl.
[13] *Tilton*, 2023 WL 6134638, at *4.
[14] *See generally* DMSJ.
[15] *See id.* at 1-3, 15-28.
[16] *See id.* at 28-32.
[17] *See generally* Plaintiffs Lynn Tilton and Octaluna III, LLC's Brief in Support of Their Cross-Motion for Summary Judgment and in Opposition to Defendant Stila Styles, LLC's Motion for Summary Judgment (hereafter "PMSJ") (D.I. 85).

II. FACTUAL AND PROCEDURAL BACKGROUND

A. The Parties, Relevant Non-Parties, and the LLC Agreement

Plaintiff Tilton is an individual resident of Florida.[18] Tilton controls Plaintiff Octaluna, a Delaware limited liability company.[19]

Defendant Stila is a Delaware limited liability company that sells cosmetics under its namesake brand.[20] In 2009, Tilton formed Stila after acquiring the assets of Stila's predecessor (the "Transaction").[21] Zohar III, a pooled Tilton-controlled investment fund, financed the Transaction.[22] For tax purposes, Zohar III is a disregarded entity.[23] Accordingly, Octaluna paid Zohar III's tax liabilities and was the beneficial owner of Stila's Member Equity recorded in Zohar III's name.[24]

As part of the Transaction, the parties executed the LLC Agreement to govern Stila's management.[25] Pursuant to the LLC Agreement, Zohar III became Stila's sole Member.[26] Tilton served as Stila's Manager from its formation until her removal in August 2022.[27] As Stila's Manager, Tilton had extensive authority to control the

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[18] Compl. ¶ 14.
[19] *Id.* ¶ 13; *Tilton*, 2023 WL 6134638, at *1; DMSJ, Ex. A 10:4-11:13.
[20] Compl. ¶ 15.
[21] *Id.* ¶ 2.
[22] *Id.*
[23] *Tilton*, 2023 WL 6134638, at *1.
[24] *Id.* at *1-2; Compl. ¶ 13.
[25] *See generally* Compl., Ex. 1 (hereafter "LLC Agreement").
[26] *Id.* § 3.1.
[27] Compl. ¶ 2; *Zohar III*, 2022 WL 1744003, at *1-2, 4, 6.

Company, including to "enter into . . . Contracts or payment obligations . . . any financing or loan Contract . . . [and] related party transactions."[28]

The LLC Agreement also imposed certain obligations on the Company.[29] Central to the parties' dispute is Section 4.9 which provides:

> [w]ithin sixty days of the end of each Taxable Year . . . the Manager will cause the Company to distribute to each Member an amount equal to the excess of (a) the product of (i) the maximum combined United States Federal and state income tax rate applicable to corporations (or individuals, if higher) doing business in the state to which the Company allocates at least ten percent of its Net Income and which has the highest such rate and (ii) the excess of the Net Income of the Company for all Taxable Years over the Net Losses of the Company for all prior Taxable Years (the "Net Income Excess") over (b) amounts of previous distributions theretofore made under this Section 4.9. Such amount will be distributed to the Members in proportion to the amount of the Net Income Excess allocated to such Members; provided that any amount that would be distributed to a Member that is a disregarded entity for United States Federal income tax purposes will instead be paid directly to the owner of such Member that is considered the Member for United States Federal income tax purposes.[30]

B. The Tax Payments and Distributions

From 2009 to 2015, Stila generated taxable income.[31] As a disregarded entity, however, Stila paid no taxes.[32] Tilton, through Octaluna, paid taxes on Stila's behalf.[33] Stila did not make any Tax Distributions to Octaluna for those years,

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[28] PMSJ, Ex. 1.
[29] *See generally* LLC Agreement.
[30] *Id.* § 4.9.
[31] *See* DMSJ, Ex. I-O (Stila's Audited Financial from 2009-2015); PMSJ, Ex. 2 (Stila's Audited Financial from 2016).
[32] *Id.*
[33] PMSJ, Ex. 19 (exhibiting the amount paid in taxes by Octaluna for Stila by year).

because it lacked sufficient operating capital.[34] Rather, Plaintiffs contend that Stila and Octaluna agreed to defer the Tax Distributions until the Company could repay without jeopardizing its operations.[35]

No writing memorializes the Deferral Agreements.[36] Plaintiffs allege that Tilton entered in a series of year-long, oral Deferral Agreements on behalf of both Stila and Octaluna, in her capacity as Manager of each entity.[37] Tilton testified that such oral agreements are consistent with her business practice.[38] The parties' vigorously dispute whether the evidence shows any Deferral Agreement exists.[39]

At Octaluna's insistence, Stila began making annual tax reimbursements in tax year 2016.[40] The unpaid Tax Distributions remained outstanding, and Octaluna did not demand payment.[41] That status quo continued until Zohar III's bankruptcy.

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[34] *See id.*; Compl., Ex. 3.
[35] DMSJ, Ex. A at 108:20-114:20.
[36] *See* DMSJ at 2; PMSJ at 11 (admitting "[t]he Deferral Agreements were not memorialized in written contracts[.]"); DMSJ Ex. A at 181:6-20 (Tilton testifying her standard practice was to make deferral contracts orally).
[37] *E.g.*, DMSJ Ex. A at 175:7-181:20.
[38] *Id.* at 181:6-20.
[39] *Compare* DMSJ at 2-5, 16-27 (arguing there is no evidence of the alleged Deferral Agreements, which would nevertheless not constitute valid contracts), *with* PMSJ at 2-5, 27-35 (asserting the evidence shows Stila and Octaluna entered into valid agreements to defer payment of the Tax Distributions).
[40] *See* DMSJ, Ex. Q (invoice for 2017 tax distribution payments); Ex. D at 105:21-109:23,116:3-117:21 (testimony evidencing Octaluna's expectation of receiving tax distribution payments from 2017 onward); PMSJ, Exs. 13-14 (invoices for 2018 and 2019 tax distribution payments).
[41] *See* PMSJ, Exs. 2-8 (Stila's 2016-2022 financials, retaining the Member's Equity which included the unpaid Tax Distributions).

C. Zohar III's Bankruptcy, Tilton's Ouster, and the Parties' Dispute

In 2018 Zohar III declared bankruptcy.[42] As part of the bankruptcy proceedings, Tilton, Stila, and the Company's creditors entered the Bankruptcy Plan.[43] The Bankruptcy Plan transferred Zohar III's assets to a newly created LLC and extinguished its equity in Stila.[44]

In April 2021, with bankruptcy proceedings ongoing, Octaluna demanded payment of the Tax Distributions.[45] Company financial executives were surprised to learn about the alleged $21.8 million liability.[46] Nevertheless, the Company: (1) reduced Member's Equity by $21.8 million;[47] and (2) created an "Accrued & Unpaid Taxes" liability entry in its books with an equivalent value.[48] Around the same time, Zohar III's creditors successfully removed Tilton as Stila's manager.[49] This prompted Tilton to ask the bankruptcy court to order Stila's sale, and payment of the

[42] *See generally In re Zohar III*, 631 B.R. at 150-51. The specific facts of Zohar III's bankruptcy are not relevant to resolving the Motions. Accordingly, the Court directs to reader to *In re Zohar III* for a complete discussion of the bankruptcy record.
[43] *See generally* Bankruptcy Plan.
[44] *See id.* §§ 4.24, 6.1(d), 6.3.
[45] *See* DMSJ, Ex. B at 139:13-22; Ex. V (invoice demanding payment of the Tax Distributions).
[46] *See* DMSJ, Ex. C at 40:24-41:11 ("neither of us knew anything about these invoices."), 70:17-20; Ex. E. at 120:24-123:23 (testifying that receiving the Tax Distributions invoice was a "holy cow [] [] moment.").
[47] *E.g.* PMSJ, Ex. 6 (Stila's 2020 audited financials memorializing the decrease in Member's Equity).
[48] PMSJ, Exs. 20-22.
[49] *Zohar III*, 2022 WL 1744003, at *1-2, 4, 6, 11-16.

Tax Distributions.[50] After the bankruptcy court concluded it only had jurisdiction to order Stila's sale, Plaintiffs filed this suit seeking payment of the Tax Distributions.[51]

D. Procedural History

Plaintiffs initiated this suit in February 2023.[52] The Complaint alleges three causes of action: (1) "Breach of the LLC Agreement: Tax Distributions";[53] (2) "Breach of the LLC Agreement: Advancement of Legal Fees and Expenses";[54] and (3) "Fees on Fees."[55] Stila filed a Motion to Dismiss Count I,[56] and answered Counts II and III.[57] Plaintiffs then filed a Motion for Partial Judgment on the Pleadings.[58]

On September 19, 2023, the Court denied both motions and ordered "limited discovery as to the nature and terms of the allege deferral agreement to determine whether the claims are barred by the . . . statute of limitations[.][59] While limited discovery was ongoing, the parties settled Counts II and III.[60]

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[50] *Tilton*, 2023 WL 6134638, at *2.
[51] *See* Compl.
[52] *See generally id.*
[53] *See id.* ¶¶ 37-44.
[54] *See id.* ¶¶ 45-51.
[55] *See id.* ¶¶ 52-53.
[56] *See* Defendant's Motion to Dismiss Count I of the Complaint (D.I. 9).
[57] *See* Defendant Stila Styles, LLC's Answer to Complaint (D.I. 10); Defendant Stila Styles, LLC's First Amended Answer to Complaint (hereafter "Answer") (D.I. 33).
[58] *See* Lynn Tilton's Motion for Partial Judgment on the Pleadings (D.I. 17).
[59] *Id.* at *4.
[60] *See* Stipulation of Partial Dismissal of Count II and Count III (the Advancement Claims) only (D.I. 42).

At the close of limited discovery, Stila filed its Motion for Summary Judgment on September 23, 2024.[61] Stila's Motion argues that Count I is untimely and barred by the Bankruptcy Plan.[62] On November 14, 2024, Plaintiffs filed their brief opposing Stila's Motion and cross-moving for summary judgment.[63] Plaintiffs' Motion argues that the invalidity of Stila's arguments, compels summary judgment in their favor on Count I.[64] Stila filed its joint opposition and reply brief in December 2024.[65] Plaintiffs filed a reply to their motion in January 2025.[66] The Court heard oral argument regarding the Motions on April 10, 2025.

III. STANDARD OF REVIEW

Summary judgment is appropriate "only when the record shows that there is no genuine issue of material fact and the moving party is entitled to judgment as a matter of law."[67] On a motion for summary judgment, the record "must be viewed in the light most favorable to the nonmoving party."[68] In considering the "paper record," the Court does not make "credibility assessments."[69] Additionally, the

[61] *See* DMSJ.
[62] *See generally id.*
[63] *See* PMSJ.
[64] *See* PMSJ at 20-45.
[65] *See generally* Reply Brief in Support of Defendant Stila Styles, LLC's Motion for Summary Judgment and in Opposition to Plaintiffs' Cross-Motion for Summary Judgment (hereafter "DMSJ Reply") (D.I. 89).
[66] *See generally* Plaintiffs Lynn Tilton and Octaluna III, LLC's Reply Brief in Further Support of Their Cross-Motion for Summary Judgment (hereafter "PMSJ Reply") (D.I. 91).
[67] *See LaPoint v. AmerisourceBergen Corp.*, 970 A.2d 185, 191 (Del. 2009).
[68] *Id.*
[69] *Id.* (citing *Williams v. Geier*, 671 A.2d 1368, 1375 (Del. 1996)).

Court does "not indulge in speculation and conjecture; a motion for summary judgment is decided on the record presented and not on evidence potentially possible."[70] Summary Judgment is not proper "if there is a material fact in dispute or if 'it seems desirable to inquire thoroughly into [the facts] in order to clarify the application of the law to the circumstances.'"[71]

"[T]he standard for summary judgment 'is not altered'" when the parties file cross-motions for summary judgment.[72] Cross-motions for summary judgment are not a "*per se* [] [] concession that there is an absence of factual issues."[73] Therefore, "even when cross-motions are filed, if 'an issue of material fact exists, summary judgment is not appropriate.'"[74]

IV. DISCUSSION

Stila's Motion asks the Court to enter summary judgment on Plaintiffs' claim for two independent reasons.[75] First, Stila contends Count I is time-barred.[76] Second, Stila argues that the Bankruptcy Plan "extinguished any basis for Plaintiffs'

[70] *In re Asbestos Litigation*, 509 A.2d 1116, 1118 (Del. Super. 1986).
[71] *Brown v. City of Wilmington*, 2019 WL 141744, at *2 (Del. Super. Jan. 8, 2019) (quoting *Ebersole v. Lowengrub*, 180 A.2d 467, 469-70 (Del. 1962)).
[72] *Total Care Physicians, P.A. v. O'Hara*, 798 A.2d 1043, 1050 (Del. Super. 2001) (quoting *United Vanguard Fund, Inc. v. TakeCare, Inc.*, 693 A.2d 1076, 1079 (Del. 1997)).
[73] *Id.*
[74] *AMC Entertainment Holdings, Inc. v. XL Specialty Insurance Company*, 2025 WL 655595, at *4 (Del. Super. Feb. 28, 2025) (quoting *Motors Liquid. Co. DIP Lenders Tr. v. Allianz Ins. Co.*, 2017 WL 2495417, at *5 (Del. Super. June 8, 2017)).
[75] *See* DMSJ at 14-32.
[76] *See id.* at 14-28.

Claim[].”[77] Plaintiffs reject both arguments.[78] Plaintiffs insist that they are entitled to summary judgment ordering payment of the Tax Distributions, because Stila’s arguments are incorrect.[79] The Court first addresses the merits of Stila’s arguments, before considering whether to grant Plaintiffs’ Motion.

A. Plaintiffs’ Breach of Contract Claim is Timely.

Count I seeks payment of the Tax Distributions pursuant to Section 4.9 of the LLC Agreement.[80] Octaluna’s payment of the Company’s tax liability for 2009 through 2015 triggered Stila’s obligation to pay the Tax Distributions.[81] Section 4.9’s plain text requires payment of any tax distribution “[w]ithin sixty days of the end of each Taxable Year[.]”[82] Therefore, Plaintiffs’ right to the last at issue Tax Distribution accrued March 1, 2016.[83] Breach of contract claims are subject to a three year statute of limitations.[84] Accordingly, absent tolling by law or agreement, Plaintiffs’ claim, which was filed in February 2023, is untimely.[85]

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[77] *See id.* at 28-32.
[78] *See* PMSJ at 20-46.
[79] *See* PMSJ Reply at 23-25.
[80] Compl. ¶¶ 37-44.
[81] *See* LLC Agreement § 4.9; PMSJ, Ex. 19.
[82] LLC Agreement § 4.9.
[83] *See ISN Software Corporation v. Richards, Layton & Finger, P&A*, 226 A.3d 727, 732 n.22 (Del. 2020) (“‘[f]or breach of contract claims, the wrongful act is the breach, and the cause of action accrues at the time of breach.’” (quoting *Certainteed Corp. v. Celotex Corp.*, 2005 WL 217032, at *7 (Del. Ch. Jan. 24, 2005))).
[84] *See Lehman Brothers Holdings, Inc. v. Kee*, 268 A.3d 178, 185-87 (Del. 2021).
[85] *See Intermec IP Corp. v. TransCore, LP*, 2021 WL 3620435, at *21 (Del. Super. Aug. 16, 2021) (“[t]he statute of limitation for a breach-of-contract claim is three years. The clock starts on the day the cause of action accrued.”); 10 *Del. C.* § 8106.

Plaintiffs raise two arguments to support their position that Count I is nevertheless timely.[86] First, Plaintiffs contend that the statute of limitations was tolled, because "Stila contemporaneously acknowledged that the tax distributions were owed and not paid each year, and later acknowledged that the full amount was due in 2021 and beyond."[87] Second, Plaintiffs argue the Deferral Agreements make Count I timely.[88] The Court addresses each argument in turn.

1. Stila's Acknowledgement of its Debt to Octaluna Tolled the Statute of Limitations.

Independent of the Deferral Agreements, Plaintiffs maintain Count I is timely because Stila acknowledged that it owed the Tax Distributions.[89]

"An admission or acknowledgement by a debtor of a subsisting debt from which a promise to pay may be implied," can toll the statute of limitations.[90] The standard "for finding an acknowledgment of debt, such that the debt is taken out of the statute of limitations, is narrowly defined."[91] Where the relevant facts are undisputed, whether an acknowledgement tolls the statute of limitations is "a question of law."[92] "Although no particular form is necessary," the admission must be "a clear, distinct and unequivocal acknowledgment of a subsisting debt and a

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[86] *See* PMSJ at 21-45.
[87] *See id.* at 21-27.
[88] *See id.* at 27-45.
[89] *See id.* at 21-27.
[90] *Kojro v. Sikorski*, 267 A.2d 603, 606 (Del. Super. 1970).
[91] *Snyder v. Baltimore Trust Company*, 532 A.2d 624, 627 (Del. Super. 1986).
[92] *Verbonitz v. Scarlett*, 1975 WL 168673, at *2 (Del. Super. July 22, 1975).

recognition of an obligation to pay it."[93] Because "a vague or loose admission of an obligation" is insufficient,[94] an acknowledgement "in the nature of admission of unsettled matters of account between the parties" does not toll the statute of limitations.[95] In determining whether an acknowledgement is clear, courts consider the "context" surrounding the at-issue statement.[96] An acknowledgment need not contain "a specific recitation of the amount due" if "context" allows calculation of the debt.[97]

Plaintiffs contend Stila acknowledged that it owed the Deferred Tax Distributions in: (1) its 2010-2016 audited financials;[98] (2) its accounting of

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[93] *Kojro*, 267 A.2d at 606 (internal citations omitted). Stila does not dispute the facts, rather it argues they do not demonstrate a sufficient acknowledgment. *See* DMSJ Reply at 16-22.

[94] *Id.*

[95] *Snyder*, 532 A.2d at 627 (internal citations omitted) (rejecting the argument that an acknowledgment tolled the statute of limitations, because "although there are clear enunciations of a promise to pay, what exactly is to be paid is never stated. Nor were there unequivocal expressions of a duty to pay.")

[96] *E.g.*, *Alphonso v. Maldonado*, 2015 WL 7068206, at *3 (Del. Super. Nov. 12, 2015); *Lambert v. Novak Druce Connolly Bove and Quigg LLP*, 2017 WL 4269882, at *5 (Del. Super. Sept. 25, 2017) (considering payments to the debtholder and a third-party, under similar circumstances, as evidence of an acknowledgement of a debt).

[97] *Alphonso*, 2015 WL 7068206, at *3; *see Hassler v. Valk Mfg. Co.*, 1983 WL 413299, at *3 (Del. Super. Nov. 17, 1983) ("[t]he specificity provided by the law does not require that an employee quote to the penny the exact amount due whenever he makes a demand on his employer to pay compensation owed him. . . . it is sufficient that the employee key the employer to the classification of compensation allegedly due and the general time frame involved. Here [debtor] *could have easily checked its invoices to determine the amount due and the specific transactions involved*.") (emphasis added).

[98] *Id.* at 23. Specifically, Plaintiffs point to Note 7 in the audited financial, which stated, "[t]he Company is required by the LLC Agreement to make cash distributions [but] . . . has not made any tax distributions." *See* PMSJ, Ex. J at 671; Ex. K at 685; Ex. L at 699; Ex. M at 714; Ex. N at 729; Ex. O at 746; Ex. 2 at 764.

"Member's Equity";[99] (3) its 2020 financials;[100] and (4) its 2022 balance sheet.[101] Stila takes the position that these documents do "not clearly, distinctly, or unequivocally acknowledge any debt owed to Plaintiffs."[102] Stila points out that Note 7 in the Audited Financials does not "mention Stila owing anyone – let alone Plaintiffs – anything for 2009 to 2015 tax distributions . . . [or] identify any amount due to Plaintiffs."[103] Stila also contends that its 2020 financials "show[] only that Ms. Tilton made a demand for the distribution in 2021," not that the Company acknowledged the debt.[104] Moreover, the "Accrued & Unpaid Taxes" entry fluctuates "every month, [and] never matches the amount of Plaintiffs claim."[105] On

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[99] *Id.* at 24-25.

[100] *Id.* at 25-26. Plaintiffs contend the Company booked the tax deferment liability on its balance sheet in 2021 and included a note in its 2020 financials which read "[o]n April 19, 2021, the Company's Class A Member has requested distributions of approximately $22,000,000. As of May 5, 2021, these distributions remain unpaid." PMSJ, Ex. 6 at 622.

[101] *Id.* at 26. Plaintiffs contend that while Stila's new management removed the booked Tax Distribution from its 2022 liabilities, the company "continued to budget $27,097,000 in 'Accrued & Unpaid Taxes.'" PMSJ, Ex. 16 at 4. Plaintiffs insist that failing to book the Tax Distributions as income evidences the Company's acknowledgement that the distributions were not waived or forgiven. PMSJ at 26. Per Plaintiffs, any contrary interpretation would be inconsistent with accounting principles. *Id.* at 35-40.

[102] DMSJ Reply at 16-22. Stila also contends that Plaintiffs' argument fails, because any acknowledgement, was not in writing as required under the LLC Agreement. *Id.* at 16, 23 (citing LLC Agreement § 11.2 ("[n]o waiver of any term or condition of this Agreement or consent to any breach or default hereof will be enforceable unless it is in writing and signed by the Person against which it is sought to be enforced.")). That argument, however, fails because tolling doctrines generally do not trigger contractual provisions that limit waiver of rights therein. *See Wind Point Partners VII-A, L.P. v. Insight Equity A.P. X Company, LLC*, 2020 WL 5054791, at *8 (Del. Super. Aug. 17, 2020); *AssuredPartners of Virginia, LLC v. Sheehan*, 2020 WL 2789706, at *13 (Del. Super. May 29, 2020).

[103] *Id.* at 18.

[104] *Id.* at 19-20. Similarly, Stila insists the "unproduced December 2022 balance sheet" does not mention Plaintiffs. *Id.* at 21.

[105] *Id.*

the other hand, Plaintiffs criticize Stila for not addressing the Company's treatment of Member Equity; "the clearest acknowledgement" of the owed Tax Distribution.[106] The Court agrees with Plaintiffs.

Stila sufficiently acknowledged that it owed Octaluna the Tax Distribution to toll the statute of limitations. Over the relevant period, the Company's audited financials stated in Note 7:

> Tax Distribution: The Company is required by the LLC Agreement to make cash distributions to the Company's Member to pay the federal and state income taxes with respect to the Member's share of the Company's taxable income. For the [relevant year], the Company has not made any tax distributions.[107]

This language plainly acknowledges the Company's obligation to reimburse its Member for taxes paid on Stila's behalf pursuant to the LLC Agreement. While Note 7 alone may be too vague, within the context provided by other evidence, it is a sufficiently clear and definite acknowledgment to toll the statute of limitations.

The first source of context is the LLC Agreement itself, which Note 7 explicitly references. The LLC Agreement reveals that Section 4.9, titled "Tax Distribution," creates the obligation referenced in Note 7.[108] The LLC Agreement also provides that Stila's sole Member is Zohar III,[109] a pass-through entity whose

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[106] PMSJ Reply at 7-9.
[107] DMSJ, Exs. I-O.
[108] LLC Agreement § 4.9.
[109] *Id.* § 3.1. *See also* DMSJ, Exs. I-O (noting that throughout the relevant period "Zohar own[ed] 100% of the Company's membership interest.").

rights and obligations flowed up to Octaluna.[110] Stila's treatment of Member Equity provides further context. Specifically, the 2010-2016 audited financials show year-over-year increases in Member Equity which capture the Tax Distributions.[111] Later audited financials show the unpaid Tax Distributions remained booked as Member Equity.[112] When Plaintiffs requested payment of the Tax Distributions, Stila again acknowledged it owed "$22,000,000."[113] The Company then reduced member equity by $21.8 million and added a new liability on its balance sheet titled "Accrued & Unpaid Taxes."[114]

Taken together, Note 7 and these internal documents show that Stila contemporaneously and continuously acknowledged it owed Plaintiffs unpaid Tax Distributions under the LLC Agreement. Context provides the means to calculate that obligation. These representations "do[] not recognize the matter as merely 'unsettled.' Instead the annual statements are unequivocal: the terms of the debt . . .

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[110] DMSJ, Ex. A at 65:24-67:20.

[111] *See* DMSJ, Exs. I-O; DMSJ, Ex. A at 133:8-134:25; Ex. D at 54:1-55:6 (agreeing the unpaid Tax Distributions were "carried [] in member's equity."); Ex. F at 90:22-92:6 (discussing how Note 7 does not include the amount of unpaid Tax Distributions, *because it can be backed out of Member Equity*); Ex. G at 45:19-50:20 (discussing how unpaid distributions would be booked as Member Equity), 58:2-9 (same).

[112] PMSJ, Ex. 15 (email discussing the removal of approximately $23.5 million in "Taxes" "Due To" Octaluna's affiliate from Stila's books in 2022); DMSJ, Ex. G at 35:15-40:10 (noting the inclusion of the Tax Distribution in the 2017 Audited Financials).

[113] PMSJ, Ex. 6 (Stila's 2020 audited financials); PMSJ, Ex. 18 ¶ 35 (letter from Stila to its auditor discussing the unpaid $22 million in Tax Distributions); *See* DMSJ, Ex. E at 39:18-40:10 (discussion the inclusion of the tax distribution note in Stila's 2020 audited financials).

[114] PMSJ, Ex. 22.

are settled but [debtor] has not yet paid[.]"[115] This acknowledgment operated until at least December 2022, when the Company's monthly financials last included "Accrued & Unpaid Taxes."[116] Hence, the statute of limitations was tolled through that date and Plaintiffs' breach claim is timely.[117] Accordingly, the Court **DENIES** Stila's Motion and **GRANTS** Plaintiffs' Motion, as they relate to the timeliness of Plaintiffs' claim. While Stila's acknowledgement is sufficient to find Plaintiffs' claim is timely, for the sake of completeness the Court analyzes the parties' arguments concerning the Deferral Agreements.

2. A Genuine Issue of Material Fact Exists Regarding the Existence of the Deferral Agreements.

Plaintiffs argue that the Deferral Agreements provide an independent basis to hold Count I is timely.[118] Specifically, Plaintiffs contend that Tilton entered into the Deferral Agreements "to determine when money would change hands."[119] Under those alleged Deferral Agreements, "Stila would defer payment of" the Tax Distributions and Octaluna would not demand payment "until, in [] Tilton's

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[115] *Connecticut Investments LLC v. KDP, LLC KDP Asset Management Inc.*, 2023 WL 6600000, at *7-8 (D. Vt. Mar. 13, 2023) (applying Delaware law) (holding statements in a company's audited financials identifying the basis of an obligation, with "'reference to a specified sum, acknowledges a pre-existing debt'" for statute of limitations purposes under Delaware law (quoting *Mykulak v. Collins*, 301 A.2d 313, 316 (Del. Super. 1973)).
[116] PMSJ, Ex. 16.
[117] Plaintiffs' claim was filed in February 2023, within the statute of limitations which began to run, at the earliest, in December 2022.
[118] *See* PMSJ at 27-45.
[119] *Id.* at 42.

judgment as Manager, the Company was in a position to pay the distributions without compromising its upward trajectory."[120] There is no dispute that none of the Deferral Agreements "were [] memorialized in written contracts[.]"[121]

Stila argues that even if the Deferral Agreements exist, they do not save Plaintiffs' breach claim from the statute of limitations for four independent reasons:

> (1) one person acting alone cannot form an enforceable agreement with herself simply by her own mental operations; (2) there is no evidence of mutual asset to the terms of the alleged deferral agreements; (3) Plaintiffs lack the power to modify the LLC Agreement under its express terms; and (4) the alleged deferral agreements would be invalid under the LLC Agreement's express terms because they must be in writing and signed to be enforceable.[122]

Plaintiffs reject each of these assertions and maintain that the Deferral Agreements are valid contracts.[123]

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[120] *Id.* at 9-10 (citing DMSJ, Ex. A at 114:13-20, 179:8-16).

[121] *Id.* at 11 (citing DMSJ, Ex. A at 181:16-20 (stating Tilton's general practice was "[t]o forgive in writing; [and] to defer [] oral[ly]."); *see* DMSJ at 3 ("[n]o writing reflect or memorialize any such terms" of the Deferral Agreements).

[122] *Id.* at 2-6.

[123] PMSJ at 27-40. Regarding Stila's modification and waiver arguments, Plaintiffs do not dispute that only Members could modify the LLC Agreement and any waiver of a right thereunder had to occur in writing. *See* PMSJ at 41-45; LLC Agreement §§ 11.2 (providing a term or condition can only be waived "in [a] writing [] signed by the Person against which [the waiver] is sought to be enforced."), 11.3 ("this Agreement . . . may be amended or modified from time to time only by the Members."). Nor could Plaintiffs argue otherwise given the unambiguous language of Sections 11.2 and 11.3; that any waiver was not in writing; and Zohar III, the Company's only Member, was not involved in any modification. *See* LLC Agreement §§ 11.2, 11.3; DMSJ, Ex. A at 170:1-19, 175:7-16 (stating Tilton made the Deferral Agreements between Octaluna and Stila). Instead, Plaintiffs argue that the Deferral Agreements did not modify the LLC Agreement or waive its conditions, but "were separate agreements . . . entered into to determine when money would change hands." PMSJ at 41-42. Stila argues that concession makes the Deferral Agreements "irrelevant," because Plaintiffs did not plead breach of "any deferral agreement." DMSJ Reply at 2, 7-8. Because the LLC Agreement was not modified, and Section 4.9's payment requirement was not waived, Stila insists the Tax Distributions remained due "[w]ithin sixty days of the end of each

Stila first argues the Deferral Agreements are invalid because "one cannot contract with oneself."[124] Similarly, Stila asserts "[c]ourts do not recognize [] alleged unspoken, unwritten decisions as enforceable contracts," out of a concern for gamesmanship.[125] Plaintiffs contend that position misstates the facts. According

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Taxable Year" and Plaintiffs' claim is time-barred. DMSJ Reply at 7-8. Plaintiffs reject the position that its concessions regarding modification and waiver are outcome determinative for two reasons. PMSJ Reply at 5-6. First Plaintiffs claim they "have consistently alleged that the Deferral Agreements merely affected the time at which money would change hands and did not modify any aspect of the obligation set forth in the LLC Agreement." *Id.* That argument is unconvincing. Section 4.9 requires payment of tax distribution within sixty days of the end of each taxable year. LLC Agreement § 4.9. Plaintiffs' do not explain how a Deferral Agreement could "affect the time at which money would change hands," without modifying or waiving that timing requirement. PMSJ Reply at 5-6. When a subsequent contract changes the parties' obligations under a previous agreement, "it can be properly said that there has been a modification of the original contract." *Drake v. Hercules Powder Co.*, 55 A.2d 630, 632 (Del. Super. Jan. 8, 1946). Therefore, Plaintiffs' first argument does not show their claim is timely. Plaintiffs' second contention is a closer call. Plaintiffs assert that "even if the contemporaneous nonpayment of the Deferred Tax Distributions represented a breach of the LLC Agreement, any breach would have been suspended within six weeks, at most, by the execution or extension of the relevant Deferral Agreement, tolling the statute of limitations." PMSJ Reply at 5. There is some factual support for this position, given that Tilton's testimony suggests she entered into the Deferral Agreements after the Tax Distribution payments were due. *See* DMSJ, Ex. A at 112:18-114:18, 192:18-193:5 (testifying that Tilton entered into the Deferral Agreements approximately April 1 of each year). Yet, Plaintiffs' position assumes the breach that existed between when payment was due, and the Deferral Agreements became effective was not material. *See Word v. Johnson*, 2005 WL 2899684, at *4 (Del. Ch. Oct. 28, 2005) ("[i]t is a basic tenet of contract law that a party is excused from performance under a contract *if the other party is in material breach thereof*," but holding "mere late payment" is generally not a material breach (emphasis added)). Materiality "is a question of fact and one that is ordinarily not suited for summary judgment." *Pac. Ins. Co. v. Higgins*, 1992 WL 212601, at *6 (Del. Ch. Sept. 2, 1992). As such, while Stila's waiver/modification argument is correct, that does not compel granting Stila's Motion.

[124] DMSJ at 16-18 (citing *1 Corbin on Contracts* § 3.1 (2024); *Stuckert v. Cann*, 111 A. 596, 597 (Del. Super. 1920) (holding a contract requires "two or more parties for a sufficient consideration to do or not do a particular thing.")).

[125] *Id.* at 18. Specifically, Stila raises the concern that "if parties could transform ideas in their head into enforceable contracts without any need to produce evidence of a written or verbalized agreement, parties could claim they formed contracts at will, with absolutely nothing but their own self-serving testimony as proof of the contract's existence and terms." *Id.* Stila also recognizes that Delaware law permits oral modifications, but "'a party seeking to prove an oral modification bears a heightened evidentiary burden and must prove the intended change to the written agreement

to Plaintiffs, Tilton did not contract with herself – she "enter[ed] into Deferral Agreements on behalf of Stila, as its Manager, and Octaluna III, as its manager . . . and [] no one other than Ms. Tilton could have done so for either entity."[126] Regarding Stila's second argument, Plaintiffs note that Delaware recognizes implied contracts where "the parties' actions reflect their mutual assent to be bound[.]"[127] Plaintiffs maintain that the evidence shows the parties' intent to be bound by the Deferral Agreements.[128]

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with sufficient specificity and directness as to leave no doubt of their intention of the parties to change what they previously solemnized by formal document.'" *Id.* at 19 (quoting *Tunney v. Hilliard*, 2008 WL 3975620, at *5 (Del. Ch. Aug. 20, 2008), *aff'd*, 970 A.2d 257 (Del. 2009)).

[126] PMSJ at 27 (citing PMSJ, Ex. 1; LLC Agreement § 5.4). Accordingly, Plaintiffs insist "there were two parties to the Deferral Agreements." *Id.* at 28-31. Plaintiffs criticize Stila's contrary position as inconsistent with fundamental Delaware corporate law which "recognizes th[e] separate legal existence [of] two distinct entitles – even where represented by the same natural person." *Id.* at 28-29 (citing *Focus Fin. Partners, LLC v. Holsopple*, 241 A.3d 784, 809 (Del. Ch. 2020) (standing for the proposition that separate LLCs have "separate legal existence[s]."); *Pond's Edge Assoc., LLC v. C&C Drywall Contractor Inc.*, 2012 WL 2192867, at *1 (Del. Super. May 31, 2012) (supporting the proposition that a single individual can sign the same agreement for distinct legal entities)). Plaintiffs go on to criticizes the cases on which Stila relies as "inapposite," nonbinding, and outdated. *Id.* at 29-30.

[127] *Id.* at 31 (citing *VLIW Tech., LLC v. Hewlett-Packard Co.*, 840 A.2d 606, 612 (Del. 2003)).

[128] PMSJ at 32-40 (citing *Chung v. Lee*, 2022 WL 990272, at *5 (Del. Super. Mar. 31, 2022) ("an intention to be bound by an agreement may be evidenced by continued performance in accordance with an agreement's terms . . . The test is whether a reasonable person would, based on the objective manifestation of assent, and all of the surrounding circumstances, conclude that the parties intended to be bound by contract."). To support that position, Plaintiffs cite evidence including: (1) Tilton's testimony that Octaluna offered to defer payment of the Tax Distributions and Stila acceptance; (2) contemporaneous documents corroborating Tilton's testimony; (3) Stila's failure pay the Tax Distributions "while [] acknowledging they were owed in each year's Audited Financials"; (4) Stila's decision to book the Tax Distributions as liabilities when Octaluna III demanded payment; and (5) Stila's audited financials. PMSJ, Ex. A at 39:11-42:6, Ex. 9; PMSJ at 33-40.

It is a fundamental principle of Delaware corporate law that each "LLC is 'a separate legal entity.'"[129] As such, Delaware courts recognize the validity of contracts executed by the same individual acting in their capacity as manager of two distinct LLCs.[130] Hence, the fact that Tilton allegedly entered into the Deferral Agreements on behalf of both Stila and Octaluna does not necessarily invalidate those contracts. Yet, that does not end the inquiry. To Stila's second point, "[t]he party seeking to enforce an agreement bears the burden of proving the existence of a contract by a preponderance of the evidence."[131]

There is a genuine factual issue regarding whether any Deferral Agreements exist.[132] To show a valid contract exists, the proffering party must show "(1) the parties intended that the instrument would bind them, demonstrated at least in part by its inclusion of all material terms; (2) these terms are sufficiently definite; and (3) the putative agreement is supported by legal consideration."[133] Courts enforce oral

[129] *Focus Fin. Partners, LLC v. Holsopple*, 241 A.3d 784, 809 (Del. Ch. 2020) (citing 6 *Del. C.* § 18-201(b)).
[130] *See, e.g.*, *Pond's Edge Assoc., LLC v. C&C Drywall Contractor Inc.*, 2012 WL 2192867, at *1 (Del. Super. May 31, 2012)
[131] *Riblett v. Riblett*, 2018 WL 1352329, at *2 (Del. Ch. Mar. 15, 2018).
[132] *Chung v. Lee*, 2022 WL 990272, at *4 (Del. Super. Mar. 31, 2022) ("[t]he burden is on the Plaintiff to prove by a preponderance of evidence the existence of a contract to which Defendant is a party." (internal citations omitted)).
[133] *Eagle Force Holdings, LLC v. Campbell*, 187 A.3d 1209, 1229 (Del. 2018) (citing *Osborn ex rel. Osborn v. Kemp*, 991 A.2d 1153, 1158-59 (Del. 2010)).

agreements that meet those requirements "where 'evidence reveals manifestations of assent that are in themselves sufficient to conclude a contract'" exists.[134]

The parties' dispute focuses on whether there is evidence of mutual assent to be bound by the alleged Deferral Agreements.[135] When evaluating whether there is mutual assent, courts focus on "overt manifestation of assent —not subjective intent."[136] Mutual assent need not take any specific form.[137] Notably, "[w]here an offeror requests an act in return for his promise and the act is performed, the act performed becomes the requisite overt manifestation of assent[.]"[138]

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[134] *Schaeffer v. Lockwood*, 2021 WL 5579050, at *15 (Del. Ch. Nov. 30, 2021) (quoting *Sarissa Capital Domestic Fund LP v. Innoviva, Inc.*, 2017 WL 6209597, at *21 (Del. Ch. Dec. 8, 2017)); *see Stuckert v. Cann*, 31 Del. 129 (Del. Super. 1920) ("[a] contract may be oral or written."). Stila relies on a series of cases discussing the heightened standard for proving an oral modification of a written contract. *See, e.g.* DMSJ at 19 (citing *Tunney v. Hilliard*, 2008 WL 3975620, at *5 (Del. Ch. Aug. 20, 2008), *aff'd*, 970 A.2d 257 (Del. 2009); *Estate of Buller v. Montague*, 2022 WL 663151, at *4-5 (Del. Super. Mar. 4, 2022)). As discussed, Plaintiffs do not claim that the Deferral Agreements modified the LLC Agreement, nor would such an argument be meritorious. Thus, there is no alleged oral modification and the cases Stila invokes are inapplicable.

[135] *Compare* DMSJ at 3, 20-22 (arguing "the alleged deferral agreements fail for lack of mutual assent."), *with* PMSJ at 32-35 (asserting "[t]he parties' conduct evidences mutual assent to be bound by the Deferral Agreements.").

[136] *Industrial America, Inc. v. Fulton Industries, Inc.*, 285 A.2d 412, 415 (Del. 1971) (internal quotations omitted); *see Schaeffer*, 2021 WL 5579050, at *16 ("[m]utual assent 'means the external expression of intention as distinguished from undisclosed intention.'" (quoting Restatement (Second) of Contracts § 2 cmt. b (1981))).

[137] *Sarissa Capital Domestic Fund LP v. Innoviva, Inc.*, 2017 WL 6209597, at *21 (Del. Ch. Dec. 8, 2017) ("[w]here the objective, contemporaneous evidence indicates that the parties have reached an agreement, they are bound by it, regardless of its form or the manner in which it was manifested."); *see Chung*, 2022 WL 990272, at *5 ("[c]ircumstances that the Court may consider are: 'the course and substance of the negotiations, prior dealings between the parties, customary practices in the trade or business involved and the formality and completeness of the document (if there is a document) that is asserted as culminating and concluding the negotiations.'" (quoting *Leeds v. First Allied Conn. Corp.*, 521 A.2d 1095, 1102 (Del. Ch. 1986))).

[138] *Industrial America*, 285 A.2d at 415; *see Chung*, 2022 WL 990272, at *5 ("an intention to be bound by an agreement may be evidenced by continued performance in accordance with an agreement's terms.").

Based on that standard, there is a genuine issue of material fact regarding mutual assent. Tilton testified extensively regarding her decision to enter into the Deferral Agreements on behalf of both Octaluna and the Company.[139] Stila raises a valid concern regarding the self-serving nature of this testimony.[140] Yet, Stila's opposition is ultimately a credibility issue which the Court does not consider at summary judgment.[141] Moreover, documentary evidence and the parties' actions corroborate Tilton's testimony.[142] If Octaluna did not assent to the Deferral Agreements, one would expect them to demand payment of the Tax Distributions or at least inquire regarding the Company's nonpayment. That Octaluna did nothing in response to Stila's nonpayment shows it performed in accordance with the alleged Deferral Agreements' terms. Accordingly, there is sufficient evidence of mutual assent to the Deferral Agreements to overcome summary judgment. As such, the Court could not resolve Count I in Stila's favor on timeliness grounds even if the Company did not acknowledge its debt.

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[139] *E.g.*, DMSJ Ex. A at 175:7-181:20 (discussing the process of entering into the Deferral Agreement for tax year 2011).
[140] *See* DMSJ at 18-19; DMSJ Reply at 13.
[141] *See, e.g.*, *JanCo FS 2, LLC v. ISS Facility Servs., Inc.*, 2024 WL 4002825, at *32 (Del. Super. Aug. 30, 2024) ("[s]ummary judgment is not the time to judge the credibility of potential witnesses.").
[142] *See, e.g.*, PMSJ, Ex. 10-12; DMSJ, Ex. I-O.

B. The Bankruptcy Plan Does Not Invalidate Plaintiffs' Claim.

Separate from its timeliness argument, Stila argues that the Bankruptcy Plan extinguished Plaintiffs' entitlement to the Tax Distributions.[143] Specifically, Stila contends "the funds [Plaintiffs] seek to have distributed to them have already been distributed to Zohar III's creditors as part of Zohar III's bankruptcy."[144] There is no dispute that the LLC Agreement treats the Tax Distributions as equity transfers to the Company's Member.[145] Stila maintains that under the Bankruptcy plan "Zohar III's equity in Stila was transferred to [the trust LLC created by the Bankruptcy Plan] and Octaluna's equity in Zohar III was entirely extinguished."[146] Therefore, Stila asserts that the Member Equity which included the Tax Distributions, "has [] already been transferred to the creditors of Stila's owner at the time – Zohar III."[147]

Plaintiffs argue that the Bankruptcy Plan's plain text invalidates Stila's position.[148] The Bankruptcy Plan confirmation order "explicitly provides that 'neither the Plan nor this Order shall constitute a release of any claims, interest or Causes of Action held by any [Plaintiff] against any non-Debtor."[149] Plaintiffs insist

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[143] DMSJ at 28-32.
[144] *Id.*
[145] LLC Agreement § 4.9 ("[a]ll amounts distributed to a Member pursuant to this Section 4.9 will be treated as advances against subsequent distributions to be made under Section 4.8 and will reduce such subsequent distributions on a dollar-for-dollar basis until the amounts treated as an advance have been repaid in full.").
[146] DMSJ at 29-32 (citing Bankruptcy Plan §§ 4.24, 6.1(d), 6.3).
[147] *Id.* at 29, 31.
[148] PMSJ at 45-46.
[149] *Id.* (quoting *In re Zohar III*, No 18-10512 Dkt. 3400 ¶ 57).

that the Bankruptcy Plan did not extinguish their claim because Stila is a "non-Debtor."

Stila posits that the above quoted text is inapplicable, because it "is not arguing that the [Bankruptcy] Plan prohibits all claims Plaintiffs might file against Stila."[150] Rather, Stila contends that the Bankruptcy Plan "determine[d] the rights of Zohar's creditors to all of Zohar's assets, which included Zohar's Member's Equity in Stila," – a portion of which was attributable to the Tax Distributions.[151] Plaintiffs contend Defendants' argument ignores that once Octaluna demanded payment of the Tax Distributions, the Company booked the debt as a liability.[152] Additionally, Plaintiffs argue that they preserved their claim to the Tax Distributions in "a May 31, 2022 order of the Bankruptcy Court."[153]

The undisputed evidence demonstrates that the Bankruptcy Plan did not extinguish Plaintiffs' right to the Tax Distributions. Stila's Motion primarily relies on the treatment of unpaid Tax Distributions as Member's Equity to advance its Bankruptcy Plan argument. A bankrupt entity's "[p]roperty" includes equity for

[150] DMSJ Reply at 24-25.
[151] *Id.*
[152] PMSJ Reply at 22. Stila insists Plaintiffs impermissibly seek to "convert a claim for a tax advance distribution from Member's equity . . . into a claim for payment of money damages from Stila to them." DMSJ at 25.
[153] PMSJ Reply at 22; *see* PMSJ, Ex. 27 (preserving claim for $21,797,438 in "Tax Distribution[s]" against Stila).

purposes of forming the bankruptcy estate.[154] Yet, once Octaluna demanded payment, Stila booked the Tax Distributions as a liability, not equity.[155] Any argument based on the Bankruptcy Plan's distribution of Zohar III's equity in Stila, ignores the fact that "money is fungible."[156] This is a breach of contract action. Plaintiffs seek monetary damages in an amount previously included in Member Equity, not the specific equity itself.

More fundamentally, the Bankruptcy Plan did not purport to void Plaintiffs' entitlement to the Tax Distributions. The Bankruptcy Plan only bars assertion of specifically released claims.[157] Rather than releasing Plaintiffs' claim, the bankruptcy court explicitly preserved a "$21,797,438" entitlement to "Tax Distributions" from Stila.[158] Stila has no response to this plain preservation of the exact claim the Stila Motion argues the Bankruptcy Plan discharged. As such, the Court holds there is no material factual dispute regarding the Bankruptcy Plan's

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[154] *E.g.*, *Encompass Services Holding Corp. v. Prosero Inc.*, 2005 WL 332810, at *4 (Del. Ch. Feb. 3, 2005) (citing 11 U.S.C. § 541(a)(1) (defining "[p]roperty" included in a bankruptcy estate as "all legal or equitable interest of the debtor in property as of the commencement of the case.")).

[155] PMSJ, Exs. 20-22; *see* PMSJ, Ex. 9 (Crawford expert opinion stating "[w]hen reflecting distributions to an LLC's member(s) on an LLC's balance sheet and in an LLC's audited financial statements, GAAP and IRS guidance require that . . . Demanded and declared distributions are deduced from the member's equity baance and booked as liabilities until they are paid."); PMSJ, Ex. 6.

[156] *See In re Happy Child World, Inc.*, 2020 WL 5793156, at *19 (Del. Ch. Sept. 29, 2020).

[157] Bankruptcy Plan §§ 10.3, 10.6. While the Bankruptcy Plan extinguished all claims against "Released Parties," Plaintiffs are not included in the definition of "Released Parties." *Id.* §§ 1.120; 10.3.

[158] PMSJ, Ex. 27.

effect on Plaintiffs' claim. Stila's Motion is **DENIED** and Plaintiffs' Motion is **GRANTED** regarding the Bankruptcy Plan dispute.

C. Plaintiffs are Not Entitled to Summary Judgment on their Breach of Contract Claim.

Plaintiffs' Motion asks the Court to enter summary judgment in Plaintiffs' favor and order Stila's payment of the Tax Distributions.[159] Plaintiffs base their entitlement to summary judgment on the invalidity of Stila's statute of limitations and Bankruptcy Plan arguments.[160] Indeed, Plaintiffs' opening brief has no argument in support of Plaintiffs' Motion, apart from its opposition to Stila's Motion.[161] Plaintiffs' claims are not time-barred.[162] Additionally, the bankruptcy court preserved Plaintiffs' claim regarding the Tax Distributions.[163] Yet, it does not automatically follow that Plaintiffs are entitled to summary judgment.

Stila flags several outstanding issues – most notably "the correct amount [of Tax Distributions] owed" and "Stila's other [affirmative] defenses[.]"[164] These matters fall outside the scope of: (1) the Motions; and (2) the discovery conducted

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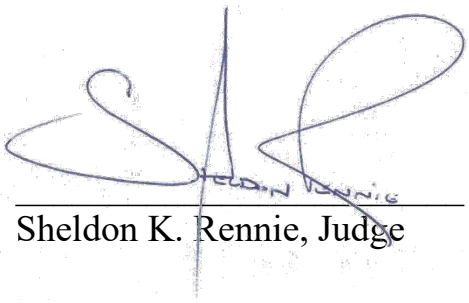
[159] *See generally* PMSJ at 20-21; PMSJ Reply at 23-25.
[160] *See* PMSJ at 20-46 ("[b]ecause the Court should find in plaintiffs' favor on both of these issues as a matter of law and on the undisputed facts, the Court should efficiently resolve this action by granting plaintiffs' Motion and entering a final judgment on the merits ordering Stila to pay the $21.8 million it owes to Octaluna[.]").
[161] *See id.*
[162] *See supra* IV.A.
[163] *See supra* IV.B.
[164] DMSJ Reply at 26-28; *see* Answer at 30-32 (pleading Stila's affirmative defenses).

by the parties.[165] Delaware courts are hesitant to grant summary judgment on issues not covered by previously conducted limited discovery.[166] Full "discovery may shed light upon outstanding material issues of fact[.]"[167] Hence, the Court **DENIES** Plaintiffs' Motion concerning Count I and will allow completion of full discovery.

V. CONCLUSION

For the foregoing reasons, the Court **DENIES** Stila's Motion for Summary Judgment and **GRANTS** in part, **DENIES** in part, Plaintiffs' Motion for Summary Judgment.

IT IS SO ORDERED this 22nd day of July, 2025.



Sheldon K. Rennie, Judge

[165] *See Tilton*, 2023 WL 6134638, at *4 (ordering "limited discovery as to the nature and terms of the alleged deferral agreement to determine whether the claims are barred by the statute of frauds or statute of limitations[.]").
[166] *See Eaton v. Raven Transport, Inc.*, 2010 WL 424458, at *2 (Del. Super. Jan. 26, 2010) ("[w]hen there are facts in dispute [] [] awaiting the completion of discovery, summary judgment is not properly granted.").
[167] *U.S. Bank National Association v. Gilbert*, 2014 WL 5712351, at *1 (Del. Super. Nov. 3, 2014).