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IN THE
APPELLATE COURT OF ILLINOIS
SECOND DISTRICT

WIGHTECH INCORPORATED and)	Appeal from the Circuit Court
TIMOTHY J. WIGHTMAN,)	of Du Page County.
)	
Plaintiffs-Appellees,)	
)	
v.)	No. 10—MR—559
)	
LIGHTSWITCH INVESTMENTS, LLC;)	
ADMINWORKS, INC.; MJ MANAGEMENT,)	
LLC; and GENECA, LLC,)	Honorable
)	Bonnie M. Wheaton,
Defendants-Appellants.)	Judge, Presiding.

JUSTICE ZENOFF delivered the judgment of the court.
Justices Bowman and Burke concurred in the judgment.

ORDER

Held: The trial court erred in denying defendants' motion to compel arbitration; all defendants were parties in interest, even though only one signed the agreement including the arbitration clause; all claims in dispute pertained to "the manner in which this Agreement is to operate" and thus were subject to arbitration, even though the dispute dealt with past conduct and the various claims were based on various theories of recovery.

Defendants, LightSwitch Investments, LLC (LightSwitch), Adminworks, Inc. (AdminWorks), MJ Management, LLC (MJ), and Geneca, LLC (Geneca), appeal interlocutorily (see Ill. S. Ct. R. 307(a)(1) (eff. Feb. 26, 2010)) from an order granting the request of plaintiffs,

WighTech Incorporated (WighTech) and Timothy J. Wightman, to stay arbitration and denying defendants' motion to compel arbitration. We affirm in part, reverse in part, vacate in part, and remand.

The Litigation

On April 12, 2010, plaintiffs filed a nine-count complaint, alleging the following core facts. WighTech is an Illinois corporation, and Wightman is its sole officer, director, and shareholder. LightSwitch is an Illinois limited liability company. MJ, an Illinois limited liability company, is LightSwitch's manager. Geneca, an Illinois limited liability company, engages in computer software consulting. Geneca is wholly owned by LightSwitch and managed by AdminWorks. AdminWorks has three shareholders: Wightman, Joel Basgall, and Mark Hattas. In 2001, they signed an agreement (Shareholders' Agreement), still in effect, governing their rights and obligations. Each man also entered into an employment agreement with AdminWorks.

The complaint alleged further as follows. In December 2001, WighTech, Basgall, and Hattas established LightSwitch. In January 2002, these three parties and seven other individuals entered into an "Amended and Reinstated Operating Agreement" (Operating Agreement). Under the Operating Agreement, WighTech, Basgall, and Hattas each owned a 31.276% membership interest in LightSwitch. Wightman "also signed the Operating Agreement to the extent that [p]aragraph 7.18 restrict[ed] [his] ability to transfer, in whole or in part, his interest in WighTech." On February 23, 2004, Wightman tendered his resignation to Basgall and Hattas. By a letter dated March 4, 2004, Basgall told Wightman that his last day of work would be March 5, 2004. Paragraph 7.12 of the Operating Agreement stated:

“In the event that either Mark, Joel or Tim *** ceases to be employed by [AdminWorks] *** the [Manager] shall have the exclusive right (the ‘Valuation Right’) to initiate the determination of the fair market value of [LightSwitch]. If such Right [sic] is initiated, [LightSwitch] *** shall have the option described in this Section 7.12 to acquire *** all or a portion of the Membership Interest of WighTech ***. The [Manager] may initiate the Valuation Right, if at all, by giving written notice thereof to the Terminated Employee within sixty (60) days of the date of the termination of the Terminated Employee’s employment by [AdminWorks]. If the [Manager] fails to deliver the notice of its intent to initiate the Valuation Right prior to the expiration of said sixty (60) day period, all rights of the [Manager], [LightSwitch], and the Remaining Members pursuant to this Section 7.12 shall lapse and be of no further force or effect.”

By a letter dated August 2, 2004, more than 60 days after Wightman had quit, LightSwitch and MJ advised him that they intended to exercise their rights under section 7.12. LightSwitch and MJ not only missed the deadline but also violated section 7.12 by sending the letter by Federal Express, rather than by certified or registered mail or by personal delivery. On September 30, 2004, purportedly per paragraph 7.14(a) of the Operating Agreement, LightSwitch and MJ mailed plaintiffs an appraisal of LightSwitch as of February 29, 2004. By a letter dated November 23, 2004, LightSwitch and MJ advised plaintiffs that they deemed all outstanding matters with plaintiffs closed. Plaintiffs alleged that LightSwitch and MJ had failed to comply with section 7.12 of the Operating Agreement; that WighTech still held 31.276% of LightSwitch; and that LightSwitch and MJ had continuously refused to acknowledge WighTech’s interest in LightSwitch.

Under the heading “Defendants’ Demand for Arbitration,” plaintiffs’ complaint alleged as follows. Paragraph 11.02 of the Operating Agreement provided, “In the event there is a dispute as to the manner in which this Agreement is to operate, the dispute shall be resolved by binding arbitration.” AdminWorks and Geneca were not parties to the Operating Agreement, and they and Wightman never agreed to submit any disputes among them to arbitration. Defendants, however, had filed a five-count claim before the American Arbitration Association (AAA). Count I sought to bar WighTech from seeking an accounting or valuation of LightSwitch, because the statutory limitations period (see 735 ILCS 5/13—205 (West 2008)) had expired. Count II asserted three separate grounds on which to find that WighTech had dissociated from LightSwitch: (i) WighTech had expressed its intention to do so; (ii) WighTech had dissociated as provided by the Operating Agreement; and (iii) WighTech had ceased to exist as of June 1, 2005, when it was involuntarily dissolved. Count III alleged that LightSwitch acquired WighTech’s membership interest on November 23, 2004. Count IV sought to purchase WighTech’s membership interest via sections 35—60 and 35—65 of the Limited Liability Company Act (LLC Act) (805 ILCS 180/35—60, 35—65 (West 2004)). This count then reasserted the three claims in count II. Finally, count V alleged that there was an oral agreement to allow WighTech to dissociate from LightSwitch. Defendants requested declarations that (1) Wightman’s ownership interest in AdminWorks and Geneca was transferred to the other shareholders per the Operating Agreement; and (2) neither plaintiff had any ownership interest in LightSwitch, AdminWorks, or Geneca.

The counts of plaintiffs’ complaint sought relief as follows. Count I requested a declaratory judgment (see 735 ILCS 5/2—701 (West 2008)) that WighTech still owned 31.276% of LightSwitch. Count II sought a declaration that Wightman was still a shareholder in AdminWorks.

Count III requested a declaration of plaintiffs' rights in Geneca. Count IV sought an accounting against LightSwitch and MJ. Count V sought an accounting from AdminWorks and Geneca. Count VI requested the dissolution of LightSwitch, alleging that, because LightSwitch and MJ had illegally prevented WighTech from participating in LightSwitch's financial affairs or reaping the benefits of its membership interest, LightSwitch should be considered dissolved and its affairs wound up per sections 35—1(4)(E) and 35—4 of the LLC Act (805 ILCS 180/35—1(4)(E), 35—4 (West 2004)). Count VII asked the court to enjoin LightSwitch and MJ from interfering with WighTech's interest in LightSwitch. Count VIII requested injunctive relief against AdminWorks to protect Wightman's rights as a shareholder in AdminWorks.

Count IX, entitled "Stay of Arbitration Proceedings," was based on section 2 of the Illinois Uniform Arbitration Act (Arbitration Act) (710 ILCS 5/2 (West 2008)). It contended that defendants' claim before the AAA was not arbitrable, as none of it involved "disputes as to the manner in which this Agreement is to operate." Count IX asserted further that, because two arbitration claimants, AdminWorks and Geneca, were strangers to the Operating Agreement, they could not invoke the arbitration clause and that, because Wightman was a stranger to the Operating Agreement, he did not have to submit to the arbitration of any disputes involving him. Finally, according to Count IX, issues that were not covered by the arbitration clause included those based on the Secretary of State's alleged actions and the existence and effect of the alleged oral agreement for WighTech to withdraw from LightSwitch.

Plaintiffs' complaint attached copies of (1) the Operating Agreement; (2) a letter dated March 4, 2004, from Basgall to Wightman, stating in part that it would confirm that "management ha[d] decided to accept" the "employment resignation" that Wightman had tendered on February 23, 2004,

and that March 5, 2004, would be Wightman's last day of work; (3) a letter dated August 2, 2004, from the attorney for LightSwitch and MJ notifying Wightman of the decision to initiate the assessment of LightSwitch's value, per paragraph 7.12 of the Operating Agreement, and stating that the appraiser would finish the appraisal within 60 days; (4) a letter dated September 30, 2004, from the same attorney to WighTech's attorney, stating that the appraisal had been completed and that a copy of the report was enclosed and requesting confirmation, per paragraph 7.14(b) of the Operating Agreement, that WighTech accepted the result; and (5) the arbitration claim filed with the AAA.

The Arbitration Claim

The arbitration claim was filed December 2, 2009. It named LightSwitch, AdminWorks, and Geneca as claimants and plaintiffs as respondents. The core factual allegations (aside from background matters) were as follows. WighTech was dissolved by the Secretary of State on June 1, 2005, and "again most recently" on June 1, 2008. On May 1, 2001, Wightman signed an employment agreement with AdminWorks and the Shareholders' Agreement. In January 2002, the members of Geneca, including WighTech, transferred their interests in Geneca to LightSwitch, and each member acquired an interest in LightSwitch. Also in January 2002, WighTech signed the Operating Agreement. Paragraph 11.02 of the Operating Agreement read, in part, "In the event there is a dispute as to the manner in which this Agreement is to operate, the dispute shall be resolved by binding arbitration."

Defendants alleged further that, by early 2004, AdminWorks had become dissatisfied with Wightman's job performance and, on February 27, 2004, he submitted his written resignation. In the weeks preceding and immediately following March 5, 2004, WighTech, through Wightman, conveyed its "intention to withdraw and dissociate from LightSwitch" in accordance with paragraph

7.10 of the Operating Agreement, which required MJ's consent for a member to withdraw and stated that, if a member withdrew "in contravention of this provision, the withdrawing Member [*sic*] shall only be entitled to such allocations and distributions as such Member [*sic*] would have been entitled" had the member not withdrawn. LightSwitch and WighTech agreed to the withdrawal and later agreed on terms of separation, *viz.*: (a) WighTech and Wightman forfeited any ownership interest in LightSwitch, AdminWorks, and Geneca; (b) WighTech and Wightman released LightSwitch, AdminWorks, and Geneca, from any future claims; (c) in consideration for (a) and (b), LightSwitch, AdminWorks, and Geneca agreed to pay WighTech and Wightman (i) \$35,000 cash; (ii) salary through March 31, 2004; and (iii) \$40,000 for a promise not to compete.

Attached to the claim was a copy of the first page of a letter dated March 10, 2004, to Wightman, headed "SEPARATION AGREEMENT AND RELEASE" and stating that it would confirm the termination of Wightman's employment with AdminWorks and "the release and forfeiture of any interest" that plaintiffs had in LightSwitch, AdminWorks, MJ, and several other entities. Also attached was a series of e-mails between Basgall and Wightman, discussing the agreement.

The claim alleged further that, after March 2004, LightSwitch paid Wightman \$40,000 as agreed, but LightSwitch and Geneca could not obtain Wightman's signature on a settlement agreement, even though he had agreed to sign on behalf of himself and WighTech. By August 2, 2004, it was apparent that neither plaintiff would sign a settlement agreement, so, on that day, LightSwitch notified them that it was exercising its option under paragraph 7.14 of the Operating Agreement to start the prescribed "valuation procedure." On September 30, 2004, WighTech and Wightman were sent a copy of an appraisal stating that LightSwitch's value was -\$5,000, so that

nobody's ownership interest had a positive cash value. On October 22, 2004, plaintiffs acknowledged receiving the appraisal and promised to reply; however, no response came. By a letter dated November 23, 2004, the claimants told Wightman that the matter was concluded and that WighTech's ownership interest in LightSwitch was valued at the initial appraisal price.

The arbitration claim had five counts. The first asserted that WighTech's request for an accounting or valuation under section 35—65 of the LLC Act (805 ILCS 180/35—65 (West 2004)) was time-barred (see 735 ILCS 5/13—205 (West 2008)). The second count asserted that, in March 2004, WighTech dissociated from LightSwitch, based on three grounds in section 35—45 of the LLC Act (805 ILCS 180/35—45 (West 2004)), in that (a) at the same time that Wightman resigned his job, WighTech expressed its intention to withdraw from LightSwitch (see 805 ILCS 180/35—45(1) (West 2004)); (b) paragraph 7.10 of the Operating Agreement (see 805 ILCS 180/35—45(2) (West 2004)); and (c) WighTech's corporate charter was dissolved on June 1, 2005 (see 805 ILCS 180/35—45(11) (West 2004)).

Third, the claimants asserted, effective November 23, 2004, LightSwitch obtained WighTech's ownership interest for the value set forth in the appraisal; alternatively, WighTech's membership interest was terminated under paragraph 7.12 of the Operating Agreement. Fourth, WighTech's membership interest in LightSwitch had been terminated for the reasons given in count II; if the valuation procedure in the Operating Agreement did not apply, sections 35—60 and 35—65 of the LLC Act called for the purchase of WighTech's interest for its fair value as of March 2004. Fifth, in March and April 2004, the parties settled; since then, Wightman had resigned from AdminWorks; WighTech and LightSwitch had agreed to let WighTech dissociate from LightSwitch;

LightSwitch had paid Wightman the \$40,000 due under the settlement; but LightSwitch had not paid the \$35,000 for his membership interest, because Wightman did not sign a settlement agreement.

The arbitration claim requested declaratory judgments that (1) plaintiffs' actions "for an accounting or otherwise" were statutorily time-barred; (2) WighTech withdrew and dissociated from LightSwitch in March 2004; (3) WighTech's membership interest in LightSwitch as of March 2004 was worth "zero dollars"; (4) LightSwitch had acquired WighTech's ownership interest; (5) under the Shareholders' Agreement, Wightman's interest in AdminWorks and Geneca was transferred to the other shareholders; and (6) plaintiffs had no interest in LightSwitch, AdminWorks, or Geneca. Alternatively, the claim requested that the arbitrator enforce the settlement agreement by requiring the parties to perform it completely.

The Litigation (Continued)

On June 10, 2010, defendants moved to stay the court proceedings and to compel arbitration (see 710 ILCS 5/1 *et seq.* (West 2008)), contending that the Operating Agreement's arbitration clause applied to the parties' disputes (with specified exceptions). Defendants reasoned that their claim that plaintiffs had given up their ownership interests in defendants, and plaintiffs' claim to the contrary, were based on paragraphs 7.10, 7.12, and 7.14 of the Operating Agreement. Second, defendants contended that any doubt whether the dispute was arbitrable should be resolved by the arbitrator, not by the court. Third, and alternatively, defendants contended that the court should compel the arbitration of all claims involving LightSwitch and Geneca, because both of their operating agreements contained arbitration clauses and counts I, III, IV, V, VI, and VII of plaintiffs' complaint involved claims against LightSwitch and Geneca.

On August 4, 2010, plaintiffs moved the trial court to stay arbitration, contending that the parties' disputes did not turn on "the manner in which [the Operating Agreement] is to operate." Plaintiffs argued specifically as follows. Count I of defendants' claim was based wholly on the statute of limitations and not at all on the Operating Agreement. Count II relied solely upon section 35—45 of the LLC Act (805 ILCS 180/35—45 (West 2004)) to contend that WighTech had dissociated from LightSwitch. Although count II alleged that WighTech had dissociated from LightSwitch via paragraph 7.10 of the Operating Agreement, it pleaded no facts in support of that contention. Count III superficially turned on paragraph 7.12 of the Operating Agreement; however, that paragraph required LightSwitch to act within 60 days after Wightman was terminated, a deadline that it indisputably missed. Count IV, like count II, requested relief via the LLC Act, not the Operating Agreement. Count V was based on the alleged settlement agreement, which was separate from the Operating Agreement.

Plaintiffs also filed a response to defendants' motion to compel arbitration and stay litigation on six counts of plaintiffs' complaint. They argued as follows. Count I of their complaint turned not on the meaning of the Operating Agreement but on the operation of the parties' separate settlement agreement, the statutory limitations period, and sections 35—45, 35—60, and 35—65 of the LLC Act. Count III sought a declaration of plaintiffs' rights against Geneca, but Geneca was a stranger to the Operating Agreement. Count IV was based on LightSwitch's alleged breaches of its fiduciary obligations of good faith and fair dealing, not on the Operating Agreement. Count V sought an accounting from AdminWorks and Geneca, who had no arbitration agreements with plaintiffs. Count VI was based on the theory that LightSwitch's actions had caused its dissolution and required it to wind up its affairs in accordance with sections 35—1(4)(E) and 35—4 of the LLC

Act (805 ILCS 180/35—1(4)(E), 35—4 (West 2004)), not because of the Operating Agreement. Finally, count VII's request for prospective relief was not based on the Operating Agreement.

Defendants filed a reply in support of their motion to stay the court proceedings and compel arbitration. They argued that counts I and III of plaintiffs' complaint were arbitrable because they turned on whether WighTech still had the interest in LightSwitch that had been created by the Operating Agreement. Also, counts IV and V, alleging that defendants breached a duty of good faith, were arbitrable because defendants owed that duty only if they had a contractual relationship with plaintiffs, and that alleged relationship came from the Operating Agreement. Next, defendants contended, counts V and VI were arbitrable, because, in order to obtain the statutory dissolution of LightSwitch, plaintiffs had to prove that WighTech had an ownership interest therein, and any such interest arose from the Operating Agreement. Count VII, for prospective relief, was viable only if WighTech had an ownership interest in LightSwitch. Finally, even were it unclear whether any of the parties' disputes were subject to arbitration, that issue must be decided by the arbitrator.

On September 30, 2010, the trial court issued a written opinion and order. The court reasoned as follows. The Operating Agreement governed the relationship between WighTech and LightSwitch, and the issue before the court was whether the disagreement over WighTech's claim of a continued interest in LightSwitch was "a dispute as to the manner in which this Agreement is to operate." Whether WighTech still had that interest depended on whether LightSwitch had complied with paragraph 7.12 of the Operating Agreement by timely initiating the valuation procedure so as to terminate WighTech's ownership interest. The court's order continued:

"Paragraph 11.02 clearly deals with disputes as to 'the manner in which this Agreement *is to* operate.' The use of the words 'is to' connotes operation in the future, not

the legal sufficiency of actions in the past. Whether the steps taken in the past by LIGHTSWITCH were sufficient to terminate WIGHTECH's interest in LIGHTSWITCH is not a question of how the Agreement 'is to operate.' The parties present questions of law as to the legal sufficiency of actions taken in the past." (Emphasis in original.)

The court granted plaintiffs' motion to stay arbitration and denied defendants' motion to compel arbitration. Defendants filed a timely notice of interlocutory appeal.

On appeal, defendants ask us to hold that counts I, IV, VI and VII of plaintiffs' complaint, and all five counts of the arbitration claim, must be decided by the arbitrator and not by the trial court. For the reasons that follow, we reverse the trial court's order insofar as necessary to grant defendants the requested relief; we vacate the stay of arbitration; and we remand the cause with directions.¹

There are two broad questions in this appeal: (1) which parties are actually bound by the Operating Agreement; and (2) whether and to what extent the Operating Agreement's arbitration clause applies to the parties' disagreements. We shall address these questions only insofar as needed to decide whether defendants are entitled to the relief that they seek.

We turn to the first general question. Plaintiffs maintain that, of all defendants, only MJ is a party to the Operating Agreement, and, therefore, any disputes or claims raised by or against the other defendants cannot be subject to arbitration. Plaintiffs cite the general rule that a nonparty to an arbitration agreement can neither compel arbitration nor be compelled to arbitrate. *Jacob v. C & M Video, Inc.*, 248 Ill. App. 3d 654, 659 (1993). They note that the only defendant who actually

¹As defendants do not contend that counts II, III, V, VIII, and IX of the complaint must be arbitrated, we do not discuss these counts.

signed the Operating Agreement was MJ. They conclude that only MJ may invoke the arbitration clause.

Defendants advance several theories why all of them—specifically, as pertinent here, LightSwitch—may obtain arbitration. First, defendants note that MJ signed the Operating Agreement as the agent of LightSwitch; section 6.01 of the Operating Agreement states that any action that MJ takes shall be the action of LightSwitch and thereby bind LightSwitch, and section 6.02 states that MJ has the power “to do on behalf of [LightSwitch] all things consistent with this Agreement which are connected or incidental to the business of [LightSwitch].” Thus, defendants reason, because LightSwitch is “manager-managed,” as opposed to “member-managed,” section 13—5(b)(1) of the LLC Act makes MJ “an agent of the company for the purpose of its business, and an act of [MJ] *** binds the company.” 805 ILCS 180/13—5(b)(1) (West 2004). Therefore, MJ signed the Operating Agreement on LightSwitch’s behalf, and it may act on behalf of LightSwitch and protect LightSwitch’s interests.

Second, defendants point us to *Elf Atochem North America, Inc. v. Jaffari*, 727 A.2d 286 (Del. 1999), in which the court applied Delaware’s statute governing LLCs to a case in which the members of an LLC, but not the LLC itself, signed the operating agreement. The court held that the LLC’s failure to sign the operating agreement did not bar the defendants—the LLC and one of its members—from invoking the agreement’s arbitration clause against a suit by the other member. The court explained that the members of the LLC were the real parties in interest and that the LLC was simply their vehicle. *Jaffari*, 727 A.2d at 293.

Third, and finally, defendants contend that LightSwitch, though it did not sign the Operating Agreement, may invoke its protections as a third-party beneficiary. See *Tortoriello v. Gerald Nissan*

of North Aurora, Inc., 379 Ill. App. 3d 214, 239-40 (2008) (third-party beneficiary of contract bound by arbitration clause). Defendants reason that, because the Operating Agreement was reached for the benefit of LightSwitch (and its members), the arbitration clause applies to any controversies over LightSwitch’s rights under the Operating Agreement.

We agree with defendants that, for all three of the reasons, the absence of LightSwitch’s signature on the Operating Agreement does not bar applying the arbitration clause to all defendants. Therefore, we turn to the second general question on appeal: whether the four contested counts of plaintiffs’ complaint, and all of defendants’ arbitration claim, must be decided by the arbitrator and not by the trial court. For the reasons that follow, we agree with defendants that the answer is “yes.”

An arbitration agreement is a contract, so that arbitrability depends on the contracting parties’ intent. *United Cable Television Corp. v. Northwest Illinois Cable Corp.*, 128 Ill. 2d 301, 306 (1989). The agreement will not be extended by construction or implication. *Salsitz v. Kreiss*, 198 Ill. 2d 1, 13 (2001); *Jameson Realty Group v. Kostiner*, 351 Ill. App. 3d 416, 428 (2004).² Here, the Operating Agreement’s arbitration clause applies to “disputes as to the manner in which [the Operating Agreement] is to operate.” The trial court, seizing on the words, “is to operate,” held that

¹In contrast to the Arbitration Act, under the federal arbitration statute (9 U.S.C. §9 *et seq.* (2006)), “[a]ny doubts concerning the scope of arbitrable issues are to be resolved in favor of arbitration.” *Simmen v. Lehman Brothers, Inc.*, 278 Ill. App. 3d 573, 575 (1996) (citing *Moses H. Cone Memorial Hospital v. Mercury Construction Corp.*, 460 U.S. 1, 24 (1983)); see also *McDonald v. Mabee*, 241 Ill. App. 3d 340, 343 (1993) (contrasting *Cone*’s construction of federal statute with “general rule applied by many Illinois courts *** that arbitration can be compelled only where the parties have clearly agreed to arbitrate the matter at issue.”).

the clause is limited to “operation in the future, not the legal sufficiency of actions in the past” and, thus, did not apply to any dispute over what the parties had done “in the past”—by which, the court apparently meant, anything that the parties had done before the date that either party invoked the arbitration clause.

As defendants urge—and plaintiffs barely contest—the trial court’s reading of the arbitration clause is strained at best. Under the trial court’s ruling, the parties may resort to arbitration solely to obtain prospective relief, such as by injunction or declaratory judgment, and not to resolve any disagreements over anything that they have already done. We cannot imagine why the parties would agree to such a limited scope for arbitration. Were that result required by the plain language of the arbitration clause, we would, of course, have to accept it. However, it is not. The Operating Agreement was signed in January 2002. It provides, “In the event there is a dispute as to the manner in which this Agreement is to operate, the dispute shall be resolved by binding arbitration.” The commonsense interpretation of the parties’ intentions when they signed the Operating Agreement is that, should they *thereafter* disagree in some given way, that disagreement shall be resolved by arbitration. After all, from the standpoint of the parties in January 2002, any future disagreement and its mode of resolution would be described in the future tense, even if it might involve what the parties had done before they came to a disagreement.

In this respect, we find persuasive the opinion in *Honomichl v. Integrated International Payroll Limited*, No. 09—CV—7218 (N.D. Ill. May 21, 2010). There, confronted with an arbitration clause identical to the one here, the court held that the clause applied to the resolution of disputes over the parties’ past conduct. We also agree with the federal court that “the manner in which [an agreement] is to operate” encompasses an alleged breach of the agreement. As the court reasoned,

deciding whether a party has breached the agreement necessarily entails how the agreement is to “operate,” *i.e.*, perform certain functions. *Honomichl*, slip op. at ____.

We turn now to the four counts of plaintiffs’ complaint that are at issue here. Because the arbitration clause addresses “disputes,” rather than specific counts of a complaint or claim or individual theories of recovery, we consider the counts collectively, although we must note their individual contents. We conclude that all the counts involve a dispute over how the Operating Agreement functions and whether defendants breached the Operating Agreement; therefore, we hold that all must be submitted to arbitration.

Count I requests a declaratory judgment that WighTech still owns a 31.276% interest in LightSwitch. The basis of WighTech’s claimed interest is, of course, the Operating Agreement, by which WighTech acquired its share of LightSwitch. WighTech contends now that it has maintained this interest and that defendants’ claim otherwise is based on their disregard, misinterpretation, or violation of the Operating Agreement—specifically, their improper attempt to use paragraph 7.12 to divest WighTech of its interest. Counts IV, VI, and VII request, respectively, an accounting, the dissolution of LightSwitch, and an injunction—three different remedies that are also based on WighTech’s alleged interest in LightSwitch and defendants’ alleged violation of that interest. Thus, the gravamen of all four counts is that, under the Operating Agreement, WighTech has retained its interest in LightSwitch. Without question, the dispute underlying these four counts is over “the manner in which [the Operating Agreement] is to operate.” Thus, all these counts must be arbitrated.

We turn to defendants’ arbitration claim. We hold that all of the counts, whatever the specific theory underlying any one of them, are within the parties’ overall dispute about the functioning of the Operating Agreement—and, per *Honomichl*, the parties’ compliance or

noncompliance with the Operating Agreement. In essence, what defendants sought to have arbitrated by filing their claim is the same *contretemps* that gave rise to plaintiffs' complaint.

Our conclusion is undisturbed by plaintiffs' attempts to characterize the various counts as disputes over something other than "the manner in which this agreement is to operate." We discuss these attempts in order. First, plaintiffs assert that defendants' first claim—that plaintiffs' request for an accounting is barred by the statute of limitations—does not concern the functioning of the Operating Agreement but instead only the operation of the pertinent statute. We disagree with plaintiffs that the situation is "either-or." Although the operation of the statute is at issue in this particular count, the count itself is purely an outgrowth of plaintiffs' request for an accounting based on the Operating Agreement and defendants' alleged breach of it. Thus, the subsidiary issue raised by this count is part of the general dispute over the Operating Agreement.

Second, in addressing counts II and IV of the arbitration claim (which, for our purposes here, are duplicative), plaintiffs note that, of the three theories that defendants advance for arguing that WighTech's interest in LightSwitch no longer exists, one relies not on the Operating Agreement but on three subsections of section 35—45 of the LLC Act (805 ILCS 180/35—45(1), (2), (11) (West 2004)). Plaintiffs contend that, for this reason, the disagreement over defendants' assertion that the LLC Act defeats WighTech's claims against them is not a dispute "as to the manner in which [the Operating Agreement] is to operate." Plaintiffs' argument overlooks two considerations. The first is that, of the three statutory grounds that defendants invoke, two actually refer back to the parties' agreement. Subsection (1), "The company's having notice of the member's express will to withdraw" (805 ILCS 180/35—45(1) (West 2004)) revisits the issue of whether WighTech decided to forgo its ownership rights under the Operating Agreement and also relates to whether defendants

properly proceeded on the assumption that WighTech was no longer a part-owner of LightSwitch under the Operating Agreement. Subsection (2), “An event agreed to in the operating agreement as causing the member’s dissociation” (805 ILCS 180/35—45(2) (West 2004)), obviously triggers an inquiry into the meaning of the Operating Agreement and into whether the parties complied with it.

The second consideration is that even what appears to be a purely statutory theory is actually part of the Operating Agreement. In *State Farm Mutual Automobile Insurance Co. v. Hanover Development Corp.*, 73 Ill. App. 3d 326 (1979), the plaintiff argued that the parties’ arbitration agreement did not cover whether their limited partnership should be dissolved. The plaintiff contended that, because the remedy of dissolving the partnership was the creature of statute (the Uniform Partnership Act (Ill. Rev. Stat. 1977, ch. 106½, pars. 1—43) and the Uniform Limited Partnership Act (Ill. Rev. Stat. 1977, ch. 106½, pars. 44—73)), it was not within the agreement. This court disagreed, explaining that the two statutes were “deemed part of the parties’ partnership agreement to the same extent as though expressly referred to or incorporated in[to] the contract itself.” *State Farm*, 73 Ill. App. 3d at 331. By the same token, here, the LLC Act is incorporated into the Operating Agreement, so that the purportedly purely statutory theory indeed gives rise to a dispute over the manner in which the Operating Agreement is to operate.

Third, plaintiffs contend that the third count of defendants’ claim does not involve a dispute that arises out of the operation of the parties’ agreement. We disagree. Count III explicitly alleges that WighTech’s interest was terminated via paragraph 7.12 of the Operating Agreement. Plaintiffs contend that, because the record proves that defendants’ right to a buyout under paragraph 7.12 expired before they invoked that provision, count III does not raise a dispute over the functioning or effect of the Operating Agreement. As defendants respond, this confuses the question of whether

a claim is arbitrable with the separate question of whether it has merit. Whether a particular issue is within the arbitration clause must be decided without reference to the merits of the issue. *United Cable Television Corp.*, 128 Ill. 2d at 307.³ Count III does not place the parties' dispute beyond the arbitration clause.

Finally, plaintiffs contend that count V of defendants' claim does not trigger the arbitration clause, in that it centers on the parties' alleged settlement agreement and not on the Operating Agreement. Plaintiffs' argument is superficially appealing, but we agree with defendants that it founders on the distinction that we have made between the parties' dispute (the controversy that arose out of the parties' actions in relation to WighTech's disputed interest in LightSwitch) and the various legal theories that might be advanced in support of either side in the dispute. We hold that count V of the arbitration claim must be decided by the arbitrator.

To summarize: We affirm the trial court's holding that counts II, III, V, VIII, and IX of plaintiffs' complaint are not arbitrable. We reverse the trial court's holding that counts I, IV, VI, and VII of the complaint are not arbitrable, and we hold that these counts must be arbitrated. We also reverse the trial court's holding that defendants' arbitration claim is not arbitrable, and we hold that the entire claim must be arbitrated. We vacate the trial court's stay of arbitration. We remand the

²As defendants also note, plaintiffs' argument on the merits is open to doubt: although defendants' invocation of paragraph 7.12 appears to have been tardy, plaintiffs' conduct, especially their alleged settlement with defendants and their alleged failure to honor the settlement, might equitably estop them from invoking the contractual time limit. See generally *Falcon Funding, LLC v. City of Elgin*, 399 Ill. App. 3d 142, 155 (2010).

cause with directions for the trial court to order the arbitration of counts I, IV, VI, and VII of plaintiffs' complaint and all of defendants' arbitration claim.

The judgment of the circuit court of Du Page County is affirmed in part, reversed in part, and vacated in part, and the cause is remanded with directions.

Affirmed in part, reversed in part, and vacated in part; cause remanded with directions.