EFiled: Jul 05 2018 10:02PM EDT
Filing ID 62206258
Case Number 172,2018

IN THE SUPREME COURT OF THE STATE OF DELAWARE

EQUITY TRUST COMPANY,	)	
	)	
Plaintiff Below,	)	
Appellant	)	
	)	
v.	)	No. 172, 2018
	)	
INTERACTIVE BROKERS LLC,	)	Case Below:
	)	
Defendant Below,	)	Superior Court of the State of Delaware
Appellee.	)	C.A. No. N17C-05-252 WCC[CCLD]

APPELLANT'S REPLY BRIEF

MORRIS, NICHOLS, ARSHT
& TUNNELL LLP
Thomas R. Pulsifer (#2398)
Matthew R. Clark (#5147)
Daniel T. Menken (#6309)
1201 N. Market Street, 16th Floor
Wilmington, DE 19801
(302) 658-9200
Attorneys for Plaintiff Below,
Appellant Equity Trust Company

July 5, 2018

TABLE OF CONTENTS

Page

TABLE OF AUTHORITIES

Page

Cases

INTRODUCTION

Equity Trust's interpretation of the Agreement is the only one that does not require engrafting a "non-renewal" option to achieve its intended outcome. Equity Trust's straightforward approach is based on the language of Section 2(k) of the Agreement that obligates Interactive Brokers to pay Closing Fees upon the closing of each account; the Fee Schedule that laid out those Closing Fees and the circumstance of their payment; and Section 9 of the Agreement that states that the Agreement is "automatically renew[ed]" each year "unless either party … terminate[d] the Agreement."

Interactive Brokers argues that the trial court properly rejected Equity Trust's interpretation, but fails to address many of the arguments in the Opening Brief. First, Interactive Brokers offers no rebuttal to Equity Trust's argument that the trial court blue penciled the Agreement to better reflect its subjective belief as to the parties' intent. Second, Interactive Brokers does not address the trial court's failure to provide a substantive explanation as to why Equity Trust's interpretation is not reasonable and appears to concede that the trial court drew inferences in Interactive Brokers' favor. Finally, Interactive Brokers argument that it does not owe Non-Bulk Closing Fees ignores the plain language of Section 2(k), which does not require the closing of accounts in an "Agreement year." If this Court finds that the trial court committed error on any of the above issues, it must reverse.

ARGUMENT

It is reversible error for the trial court to grant a motion to dismiss if the plaintiff's interpretation of the contract is reasonable.[1] As Equity Trust set forth below and in its Opening Brief on appeal, its interpretation of the Agreement is not only reasonable, but the only interpretation that does not require the court to read additional terms into the contract.

Interactive Brokers' primary argument on appeal appears to be that Equity Trust's interpretation is not reasonable because the trial court said so. Yet, neither the trial court nor Interactive Brokers is able to explain why Equity Trust's interpretation of the agreement is not reasonable outside of their subjective belief that the contracted-for Closing Fees somehow constitute a "penalty"[2] and that enforcing those so-called penalties would produce an "absurd result."[3]

---

1 *VLIW Tech., LLC v. Hewlett-Packard Co.*, 840 A.2d 606, 614-615 (Del. 2003). Contrary to Interactive Brokers' amorphous complaint on pages 20 and 21 of its Answering Brief, Equity Trust is under no obligation on appeal to defer to the trial court's conclusion that Interactive Brokers' interpretation is reasonable. Indeed, that it is the purpose of *de novo* review.

2 Op. at 14; Ans. Br. at 22.

3 Op. at 10; Ans. Br. at 13 n.34, 15 n.36. Whether Equity Trust's interpretation yields an "absurd result" is irrelevant if its interpretation is reasonable. *W. Willow-Bay Court, LLC v. Robino-Bay Court Plaza, LLC*, 2007 WL 3317551, *12 (Del. Ch. Nov. 2, 2007), *aff'd*, 985 A.2d 391 (Del. 2009) ("A wide gulf exists between construing an ambiguous contract as commanding an absurd result and simply enforcing the language of a revised contract that appears to be a poor bargain based upon a close and careful reading of its terms.").

Neither the trial court nor Interactive Brokers is able to reconcile their subjective belief that the Closing Fees amounted to a penalty with the plain language of the Agreement, which requires the payment of Non-Bulk Closing Fees upon the "closing" of each account and requires the payment of Bulk Closing Fees upon the "termination" of more than 20% of the accounts, which Section 9 equates with the non-renewal of the Agreement. Thus, the trial court was forced to take the extraordinary step of blue penciling the Agreement to support its own "reasonable conclusions" that "the Agreement provided the parties a non-renewal option;" and that, because Interactive Brokers exercised that implicit option, it "did not 'terminate' the Agreement during a calendar quarter in the 2016 Agreement year."[4]

As discussed below, the trial court's "reasonable conclusions" do not withstand scrutiny. First, the trial court erred as a matter of law by rewriting the terms of the Agreement to support Interactive Brokers' interpretation. Second, the trial court failed to explain why Equity Trust's text-based interpretation was unreasonable and improperly drew factual inferences against Equity Trust to prop up Interactive Brokers' interpretation. Third, the trial court improperly conflated the contractual requirements to trigger the Non-Bulk Closing Fees and the Bulk Closing Fees. For each of these reasons, the trial court committed reversible error in dismissing the Complaint.

---

[4] Op. at 10-11.

A. The Trial Court Erred By Rewriting Section 9.

The first error in the trial court's decision is that its conclusion that Interactive Brokers' interpretation is the only reasonable reading of the Agreement required the trial court to add new language into the Agreement. Specifically, the trial court edited Section 9 to add in a neutral non-renewal option found nowhere in the plain language of the Agreement. The trial court's redrafting of Section 9 was based on nothing more than its subjective belief that the parties intended to allow for a fee-free exit from the Agreement and ignored that Section 9 already provided a means for Interactive Brokers to exit the Agreement—albeit one that triggered contractually-required Closing Fees. That judicial "blue-penciling" violated basic rules of contract construction that prohibit a court from redrafting a contract "under the guise of interpretation" or "to accord with its instinct for the dispensation of equity upon the facts of a given case."[5] Standing on its own, the trial court's misapplication of the proper legal standards constitutes reversible error.[6]

---

[5] *Terwilliger v. Terwilliger*, 206 F.3d 240, 245 (2d Cir. 2000); *Cincinnati SMSA Ltd. P'ship v. Cincinnati Bell Cellular Syst. Co.*, 703 A.2d 989, 992 (Del. 1998); *Gertrude L.Q. v. Stephen P.Q.*, 46 A.2d 1213, 1217 (Del. 1983); *In re Int'l Re-Ins. Corp.*, 86 A.2d 647, 652 (Del. 1952).

[6] *Nationwide Emerging Mgrs, LLC v. Northpointe Hldgs, LLC*, 112 A.3d 878, 881, 897 (Del. 2015); *GMG Capital Invs. v. Athenian Venture P'rs I*, 36 A.3d 776, 781-84 (Del. 2012).

Interactive Brokers' does not dispute that blue-penciling constitutes reversible error and makes no attempt to distinguish the authorities Equity Trust cites in support of that proposition. Indeed, to the extent Interactive Brokers acknowledges Equity Trust's blue-penciling argument at all, it is limited to a one sentence denial that the trial court re-wrote the agreement.[7]

Interactive Brokers' flat-out denial stands in contrast to the trial court's frank admission that it was reading into Section 9 an implied non-renewal option that was not expressly stated anywhere in the Agreement.[8] The trial court did so despite the fact that Paragraph 9 already included an explicit option to "terminate" the Agreement and based on nothing more than its belief that the parties would have wanted a means to exit the agreement without paying the closing fees triggered by a "termination."[9] The trial court then utilized the implied term it engrafted on the Agreement to conclude that not only could Interactive Brokers elect to not renew the Agreement, but that in doing so, it could also avoid paying both the Non-Bulk and Bulk Closing Fees.

---

[7] Ans. Br. at 16.

[8] Op. at 12 ("The Court finds there is a common sense implication that if you have the option to renew, you also have the option not to renew.")

[9] Op. at 12. The trial court ironically based its decision to read an implied provision into the contract on its belief that, if the parties had intended for not renewing the Agreement to be a termination, they would have clearly set forth that understanding and referenced the applicable fees.

The trial court compounded its error by concluding that its blue-penciled version was the only reasonable interpretation of the Agreement and that Equity Trust's interpretation based on the ***actual*** language of Paragraph 9 was unreasonable, thus leading to the dismissal of Equity Trust's claim.[10] As explained in Equity Trust's Opening Brief, and unrebutted by Interactive Brokers, the trial court's rewriting of the Agreement constitutes grounds for reversal.[11]

B. The Trial Court Erred In Concluding That Equity Trust's Interpretation Was Unreasonable.

The trial court's second error is its failure to justify its conclusion that Equity Trust's interpretation of the Agreement—the only interpretation that did not require engrafting implicit options into the plain language of Section 9—was unreasonable. Moreover, the trial court's support for Interactive Brokers' interpretation ignored clear support for Equity Trust's interpretation in the plain language of the Agreement and improperly drew factual inferences in Interactive Brokers' favor. In doing so the trial court committed reversible error.[12]

---

[10] Op. at 10-11.

[11] *Nationwide*, 112 A.3d at 881("Instead of giving effect to the parties' contractual bargain, the Superior Court erred by implying contractual obligations on the part of the seller that were inconsistent with the contract's express terms.").

[12] *GMG Capital*, 36 A.3d at 781-82 (reversing trial court after finding that appellant's interpretation that gave "maximum effect" to the language of the contract was reasonable and trial court's belief as to the parties' intent was not reflected in the four corners of the agreement).

Equity Trust's interpretation of the Agreement is straightforward, reasonable, and grounded in the express language of the Agreement. Under Section 2(k), Interactive Brokers agreed to pay "fees for Accounts closed during a calendar quarter … as set forth in [the Fee Schedule]."[13] The Fee Schedule provided that Interactive Brokers owed Equity Trust a Non-Bulk Closing Fee of $20 per account in exchange for closing the account and/or transferring the assets to a successor, and an ***additional*** Bulk Closing Fee of $40 per account "[i]f more than 20% of the Account base ***terminates*** in any Agreement year."[14] Under Section 9, the Agreement "automatically renew[ed] each year "unless either party … terminate[d] the Agreement."[15]

Thus, when Interactive Brokers elected not to renew the Agreement in October 2016 and directed Equity Trust to transfer all 46,317 Accounts, it closed the accounts within the meaning of Section 2(k) and "terminated" the Agreement within the meaning of Section 9. Those actions triggered both Closing Fees and obligated Interactive Brokers to pay Equity Trust $60 for each of the 46,317 Accounts that were closed pursuant to the Notice.

---

[13] A022-23 (Agreement § 2(k)); A011 (Compl. ¶ 14).

[14] A037 (Fee Schedule) (emphasis added); A011 (Compl. ¶¶ 15-16).

[15] A026 (Agreement § 9); A012 (Complaint ¶ 18).

1. The Trial Court Improperly Rejected Equity Trust's Reasonable Interpretation Of Section 9.

As Interactive Brokers duly notes, the trial court found Equity Trust's position to be "unpersuasive," but there is no substance behind the trial court's descriptive language that justifies its conclusion that Equity Trust's interpretation is not a reasonable one. Indeed, the trial court's primary justification is its own subjective belief that the parties intended Section 9 to include an implicit option not to renew the Agreement despite the acknowledged presence of an express option to "terminate[]" the Agreement that the trial court found was indistinguishable from an option not to renew.[16] The trial court's circular analysis does not withstand scrutiny.

The trial court found that the Agreement did not make a distinction between non-renewal and termination, and that "the use of 'terminate' instead of 'non-renewal'" should be considered "meaningless."[17] That finding is entirely consistent with Equity Trust's interpretation of the Agreement, which states that Section 9 provides for one—and only one—method for the parties to avoid the

[16] Op. at 11-12.

[17] Op. at 12.

automatic renewal off the Agreement—to "terminate[] the Agreement" by providing "at least sixty (60) days' written notice prior to the renewal date…."[18]

Having found support for Equity Trust's interpretation in the language of the Agreement, the trial court should have concluded that the Complaint could not be dismissed at the pleadings stage. Yet, in the very next sentence, under the guise of interpreting the Agreement, the trial court made precisely the kind of distinction between "terminate" and "non-renewal" that it had just stated was not supported by the plain language of the Agreement.[19] Despite concluding in the previous paragraph that the terms were "interchangeable," the trial court proceeded to not only distinguish between the terms, but created "an inherent option for non-renewal" that, in the trial court's view, *differed* from a "termination" by allowing Interactive Brokers to exit the Agreement without paying any of the Closing Fees specified in the Agreement.[20] In defending its analysis, the trial court concedes

---

[18] A026 (Agreement § 9).

[19] Op. at 11-12.

[20] Op. at 12. *Compare* Op. at 11 (finding that using the term "terminate" in Section 9 instead of "not renew" was unintentional and a "distinction without a difference," and that the terms could be used "interchangeably") *with* Op. at 12 (distinguishing between the terms and creating a "non-renewal" option to skirt the Closing Fees that would have been triggered by a "termination").

that its implied alternative method of non-renewal was not supported by any specific language in Section 9, but rather its own "*common sense implication*."[21]

The trial court's weak justification for finding a non-renewal option–that there was no language that *precluded* its implied second method of non-renewal—completely ignores the facts that (a) Section 9 *already* ***expressly*** provided an option for non-renewal: sixty days' written notice of termination; and (b) while Section 2(k) and the Fee Schedule do not expressly prohibit alternative means of ending the Agreement, by obligating Interactive Brokers to pay Non-Bulk Closing Fees upon the *closing* of the Accounts and triggering Bulk Closing Fees upon the *termination* of more than 20% of the Accounts, those sections do militate against a *fee-free* non-renewal.[22]

Moreover, it is equally true that there is no language that *required* a second method of non-renewal under Section 9 or *required* that such an option allow Interactive Brokers to avoid the Closing Fees mandated under the Agreement. While the parties *could* have included more specific language in the

---

[21] Op. at 12 (emphasis added).

[22] As explained in the Opening Brief, the trial court also did not explain the procedure for exercising the fee-free non-renewal option it read into the Agreement or whether Interactive Brokers complied with it. Op. Br. at 20 n.46.

Agreement it was not *unreasonable* that they elected not to do so. The trial court glossed over or ignored those facts that supported Equity Trust's interpretation.

Interactive Brokers does not address or provide any rebuttal for those arguments in its Answering Brief. Instead, it claims that this Court's decision in *VLIW Technologies, LLC v. Hewlett-Packard Co.*[23] does not warrant dismissal here because this Court's reversal in that case depended on a finding that the contract was ambiguous. But that is precisely the point of *VLIW*. Like the trial court in this action, the trial court in *VLIW* concluded that the contract was unambiguous and that the defendant had posited the only reasonable interpretation.[24] As in this action, the trial court's conclusion was subject to *de novo* review on appeal. Upon such review, this Court concluded that the trial court had committed reversible error by failing to consider the plaintiff's reasonable reading of the contract. This Court clarified that, "[d]ismissal, pursuant to Rule 12(b)(6), is proper only if the defendants' interpretation is the *only* reasonable construction as a matter of law."[25] For similar reasons, the trial court's conclusion that the Agreement was

---

[23] 840 A.2d 606 (Del. 2003).

[24] *Id.* at 613.

[25] *Id.* at 614-15.

unambiguous fails to give adequate consideration to Equity Trust's reasonable reading of the Agreement and constitutes reversible error.

Finally, Interactive Brokers cites a block quote from its own Reply Brief below that it purports to be supportive of its argument that not renewing the Agreement under Section 9 was different than terminating the Agreement.[26] But neither of the cases cited in the footnote further Interactive Brokers' position. The first, *Kitsap County Consol. Housing Auth. v. Henry-Levingston*,[27] is a post-trial decision from the Court of Appeals of Washington construing a federal statute concerning public housing. The statute at issue, like Section 9, provided only two options for a public housing lease: automatic renewal or termination.[28] The court concluded that the statute meant what it said and permitted ***either*** termination of the lease ***or*** automatic renewal if the lease had not been terminated. It did not read into the statute a neutral alternative where the plaintiff public housing authority could simply decide not to renew the lease for no reason. Instead, the only alternative to automatic renewal was a termination, which came with all of the protections to the defendant lessee that were attendant to an attempt to terminate

---

[26] Ans. Br. at 15 & n.36

[27] 385 P.3d 188, 195 (Wash. Ct. App. 2016).

[28] *Id.* (construing 42 U.S.C. § 1437(d)(*l*)).

the lease.[29] That is the same outcome Equity Trust advocates here—the Agreement was either terminated or renewed; no non-renewal option exists to achieve a consequence-free termination.

The second, *King v. Housing Auth. of Pittsburgh*,[30] is inapposite because the statute at issue expressly provided the housing authority with separate options to either "terminate" a lease or "refuse to renew" a lease. Thus, unlike Section 9, the plain language of the statute in *King* created a non-renewal option.

2. The Trial Court Improperly Concluded That The Closing Fees Were A Penalty.

The trial court also erred in finding that the only reasonable interpretation of the Agreement was that the Closing Fees were "a non-renewal penalty" or a "fee for simply parting ways."[31] In reaching that conclusion, the trial court ignored that Section 2(k) and the Fee Schedule provided clear evidence that Equity Trust's predecessor bargained for—and Interactive Brokers agreed to pay—the Closing Fees. Those sections are clear that the Closing Fees are *not* a penalty, but compensation to Equity Trust for services provided in connection with closing

[29] *Id.*

[30] 496 A.2d 1280, 1281 (Pa. Commw. Ct. 1985).

[31] Op. at 14.

the accounts and transferring them to a successor trustee.[32] The Complaint alleged and Interactive Brokers admitted that it had routinely paid the Non-Bulk Closing Fee whenever an Account was closed during the two years in which Equity Trust was a party to the Agreement[33] and no one disputed that Interactive Brokers would owe the Bulk Closing Fee if more than 20% of the Accounts had been closed or transferred to a successor either in the middle of the year or at the end of a year in which the Agreement was being renewed.[34]

In response to those arguments, Interactive Brokers simply parrots the trial court's conclusion that the Closing Fees would subject Interactive Brokers to a penalty, and does not address Equity Trust's argument that the plain language of the Agreement explained that the Closing Fees were compensation for services performed by Equity Trust that had been negotiated and agreed to by Interactive Brokers. As explained above, Equity Trust's argument is reasonable and supported by the plain language of the Agreement. Thus, the trial court erred in finding that the Closing Fees could only reasonably be viewed as a non-renewal penalty upon a termination of Section 9 of the Agreement.

---

[32] A022-23 (Agreement § 2(k)); A037 (Fee Schedule)).

[33] A013 (Compl. ¶ 19); A050 (Def. Op. Br. at 4).

[34] A109-10 (Hr'g Tr. at 16:19-17:5).

3. The Trial Court Improperly Drew Factual Inferences Against Equity Trust.

In addition to ignoring support for Equity Trust's reasonable interpretation of the Agreement, the trial court improperly supported its conclusion with factual inferences that favored Interactive Brokers over Equity Trust. Interactive Brokers provides no specific rebuttal for Equity Trust's argument that those inferences were inappropriate. Instead, Interactive Brokers claims that the trial court was free to do so under the guise of "interpreting" the Agreement. But this Court's direction in *Central Mortgage* is clear: when ruling on a motion to dismiss, the trial court is obligated to "(1) accept all well pleaded factual allegations as true, (2) accept even vague allegations as 'well pleaded' if they give the opposing party notice of the claim, [and] (3) ***draw all reasonable inferences in favor of the non-moving party***…."[35]

First, the trial court misread the Agreement and impermissibly drew inferences in favor of Interactive Brokers in concluding that no Closing Fees could be due because the Notice provided that Interactive Brokers had continuing obligations under the Agreement through December 31, 2016.[36] That conclusion is problematic for numerous reasons. Primarily, it is contradicted by the Complaint,

[35] *Cent. Mortg. Co. v. Morgan Stanley Mortg. Capital Hldgs, LLC*, 27 A.3d 531, 535 (Del. 2011) (emphasis added).

[36] Op. at 13.

which alleges that "Interactive Brokers terminated all 46,317 Accounts *effective December 31, 2016*"—*i.e.*, while the Agreement was in force—and that, despite Equity Trust's attempts to negotiate an orderly conversion following delivery of the Notice, Interactive Brokers unilaterally removed Equity Trust's name from the Accounts and transferred them without Equity Trust's knowledge at some point *prior to January 4, 2017*.[37] It is a reasonable inference from those allegations that Interactive Brokers closed and transferred the Accounts at some point prior to the close of 2016, clearly triggering both the Non-Bulk and Bulk Closing Fees. The trial court erred by drawing the opposite conclusion.

The trial court's conclusion is also a non sequitur. That Interactive Brokers' obligations continued through the termination of the Agreement is a truism with no bearing on when the Accounts were transferred and whether doing so triggered Closing Fees.[38]

Interactive Brokers makes the unsupported claim that no accounts were closed, transferred, or terminated before December 31, 2016, but concedes

---

[37] A015-17 (Compl. ¶¶ 30-33, 40).

[38] A012 (Compl. ¶ 20); A039 (Compl. Ex. B (Notice)). The trial court's conclusion is also simply unsupported by the two-sentence Notice, which does not admit or deny any continuing obligations under the Agreement, but states only that Interactive Brokers elected not to renew the Agreement and that "December 31, 2016 will be the last day the Agreement is effective." *Id.*

that the Complaint does not allege the specific date those actions took place.[39] Interactive Brokers then argues that, in the absence of such allegations, the trial court properly inferred from the Notice that the Accounts were not closed or transferred prior to December 31, 2016. But that argument misses the point. As explained above, the Notice does not support such an inference, but even if it did, the Notice equally supports the opposite inference that the accounts were closed or transferred prior to the close of 2016. At the pleadings stage, Equity Trust is entitled to the benefit of that inference.[40]

Second, the trial court's conclusion that the Closing Fees amounted to a "non-renewal penalty" was also wrongly premised on a series of improper inferences that favored Interactive Brokers. Specifically, the trial court inferred that Interactive Brokers "would [not] have agreed to pay a fee for simply parting ways."[41] Even if Interactive Brokers' subjective intent at the time of contracting had any bearing on the determination of whether the Agreement was ambiguous, there is no support in the record for the trial court's inference. Indeed, the only support is for the opposite inference: that, in agreeing to Sections 2(k) and the Fee

---

[39] Ans. Br. at 19, 25.

[40] *Cent. Mortg.*, 27 A.3d at 535.

[41] Op. at 14.

Schedule (last amended in 2012) that imposed Closing Fees based on the closing and/or transfer of accounts, Interactive Brokers understood that it would owe Equity Trust a fee at such time that it determined to terminate the Agreement. The trial court erred in drawing the inference against Equity Trust.[42]

C. The Trial Court Erred By Conflating The Requirements To Trigger The Non-Bulk and Bulk Closing Fees.

The third error in the trial court's decision is conflating the issue of whether the Agreement was terminated "during a calendar quarter in the 2016 Agreement year" with whether Interactive Brokers was contractually obligated to pay Equity Trust the Non-Bulk Closing Fee. Pursuant to the Fee Schedule, the Non-Bulk Closing Fees and Bulk Closing Fees are triggered under different contractually defined circumstances. The Non-Bulk Closing Fees are due whenever an account is closed or transferred. The Bulk Closing Fees are due when more than 20% of the accounts are terminated in an Agreement year. Thus, even if the Court finds that the Bulk Closing Fee is not applicable, it is reasonable that the parties intended to compensate Equity Trust for the additional services attendant in preparing each Account to be closed and/or transferred to a successor trustee—the only requirement to trigger the Non-Bulk Closing Fee.

---

[42] *Cent. Mortg.*, 27 A.3d at 535.

Interactive Brokers argues Equity Trust ignores Section 2(k) and argues that the phrase "calendar quarter" appearing therein requires that the Accounts must also be closed in an "Agreement Year." But as Equity Trust explained in the Opening Brief, that interpretation is not mandated by Section 2(k), which requires a fee of $20 to be paid whenever an account is "[c]lose[d]" and/or "[t]ransfer[red] … to [a] Successor." Unlike the Bulk Closing Fee, which requires the termination of more than 20% of the accounts in a single "Agreement Year," the Non-Bulk Closing Fees are under no such limitation. They are due whenever an account is closed and/or transferred, regardless of whether the Agreement remained in force, was terminated, or—contrary to the language of the Agreement—was simply not renewed. Indeed, allowing Interactive Brokers to avoid the Non-Bulk Closing Fee merely because the Agreement had not been renewed would allow Interactive Brokers to do exactly what it did here—lead Equity Trust to believe that there was no issue with the fees, then withhold payment and claim that it is not due because the calendar turned.

CONCLUSION

For the reasons stated here and in Appellant's Opening Brief, Appellant respectfully requests that the Supreme Court should reverse the trial court's decision to grant Interactive Brokers' Motion to Dismiss.

MORRIS, NICHOLS, ARSHT &
TUNNELL LLP

/s/ Matthew R. Clark
Thomas R. Pulsifer (#2398)
Matthew R. Clark (#5147)
Daniel T. Menken (#6309)
1201 N. Market Street, 16th Floor
Wilmington, DE 19801
(302) 658-9200
Attorneys for Plaintiff Below,
Appellant Equity Trust Company

July 5, 2018