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IN THE SUPREME COURT OF THE STATE OF DELAWARE

SAADIA SQUARE LLC, Plaintiff Below-Appellant, v. SM LOGISTICS MEMBER LLC, Defendant Below-Appellee, and SM LOGISTICS HOLDCO LLC, Nominal Defendant Below-Appellee.	No. 396, 2021 APPEAL FROM THE COURT OF CHANCERY OF THE STATE OF DELAWARE, C.A. NO. 2021-0931-MTZ

APPELLANT'S REPLY BRIEF

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INTRODUCTION

Ultimately, this appeal requires the Court to consider how Delaware law addresses situations where a member-managed limited liability company's governing agreement omits language defining the circumstances under which the members may choose to change the manager and how to do so. When Saadia Square LLC ("Saadia" or "Plaintiff") and SM Logistics Member LLC ("SM" or "Defendant") formed SM Logistics Holdco LLC (the "Company"), they agreed that SM would manage the Company. Therefore, like nearly all operating agreements for member-managed LLCs, the Company's Operating Agreement identifies one member (here, SM) as the "Managing Member." Additionally, as almost all contracting parties do, Saadia and SM agreed that they would not amend the Company's Operating Agreement unless they both approved the amendment.

These two contractual terms – identifying an LLC's managing member and requiring all members' unanimous consent to amend the operating agreement – are clear, common, and non-controversial. By their language, they answer two simple questions – who is to manage the LLC, and how will the members modify the terms they agreed upon to define their relationship as investors?

The questions these commonly used terms do *not* answer, however, include whether and when the members can remove and replace the manager if the manager's performance does not meet the members' expectations. Delaware courts

do not hear cases where the relationship between contracting parties continues to be as cooperative as it was when the parties executed their contract; the courts hear *disputes* that arise when an LLC's member believes the manager is not conducting itself in accordance with the agreed-upon terms. In these disputes, what rules will Delaware law apply when the members have not articulated in their contract a method or process to be followed if the members want to change who manages their investment?

The General Assembly adopted the Limited Liability Company Act, 6 *Del. C.* § 18-101 et seq. (the "LLC Act"), to provide such rules to govern situations that members did not anticipate or address specifically in their LLC agreement. In this case, there is no dispute that the Company's Operating Agreement is silent as to how and under what circumstances the Managing Member may be removed and replaced. Despite this omission, SM and the Court of Chancery did not look to the LLC Act for guidance. Instead, they viewed the two general terms referenced above – one simply naming SM as Managing Member and the other requiring the members' unanimous consent to amend the Operating Agreement – as evidencing an understanding between Saadia and SM that SM would serve perpetually as Managing Member, no matter the circumstances, unless and until Saadia and SM jointly amended the Operating Agreement to identify a different Managing Member. The Operating Agreement certainly does not express such an understanding

explicitly; instead, SM and the Court of Chancery *inferred* this intent from two unrelated and generic provisions. By granting judgment on the pleadings to SM, the Court of Chancery concluded that this is the *only* reasonable interpretation of the Operating Agreement.

The interpretation offered by SM and the Court of Chancery, however – under which an omission of removal language from the Operating Agreement means the Managing Member can never be removed unless the Operating Agreement is amended with the Managing Member's consent – is neither the only reasonable one nor one that should govern as a matter of Delaware law. It is equally (if not more) reasonable to interpret the Operating Agreement, read as a whole, to permit parties other than SM to manage the Company. Since the Operating Agreement does not define when and how to change the Managing Member, the LLC Act provides a default rule as it does in other contexts. While SM argues that its economic rights in the Company allow it to reject any effort to remove it as Managing Member, the Operating Agreement differentiates between Saadia and SM as "Members" in material ways that give Saadia a majority right to the Company's profits and, accordingly, the authority to remove and replace the Managing Member.

Nothing in SM's answering brief (cited as "Ans. Br.") justifies rejecting Saadia's interpretation or affirming the Court of Chancery's judgment below. Because Saadia's interpretation of the Operating Agreement is at least equally as

reasonable as SM's, the pertinent terms are legally ambiguous and do not entitle SM to judgment in its favor as a matter of law. Accordingly, the Court of Chancery's judgment should be reversed, and this action should be remanded for further proceedings.

ARGUMENT

I. THE OPERATING AGREEMENT DOES NOT UNAMBIGUOUSLY PROHIBIT REMOVAL AND REPLACEMENT OF THE COMPANY'S MANAGING MEMBER.

There is no debate that "Delaware law … seeks to ensure freedom of contract and allow parties to enforce their bargains in our courts." *NAF Holdings, LLC v. Li & Fung (Trading) Ltd.*, 118 A.3d 175, 180 (Del. 2015). The LLC Act similarly states that it is intended to "give the maximum effect to the principle of freedom of contract and to the enforceability of limited liability company agreements." 6 *Del. C.* § 18-1101(b). Therefore, "[i]In resolving governance disputes in the LLC context, the court first looks to the rights and obligations as set forth in 'the parties' bargained-for operating agreement.'" *Mehra v. Teller*, 2021 WL 300352, at *16 (Del. Ch. Jan. 29, 2021) (quoting *Franco v. Avalon Freight Servs. LLC*, 2020 WL 7230804, at *2 (Del. Ch. Dec. 8, 2020)).

This, however, does not end the analysis, since "Delaware courts interpret LLC agreements like other contracts." *Id.* Under well-established principles of contract construction, "[c]ontract terms themselves will be controlling when they establish the parties' common meaning so that a reasonable person in the position of either party would have no expectations inconsistent with the contract language." *Eagle Indus., Inc. v. DeVilbiss Health Care, Inc.*, 702 A.2d 1228, 1232 (Del. 1997). "When the provisions in controversy are fairly susceptible of different

interpretations or may have two or more different meanings, there is ambiguity." *Id.* If the pertinent terms are ambiguous, "[t]hen the interpreting court *must* look beyond the language of the contract to ascertain the parties' intentions." *Id.* (emphasis added). SM concedes, as it must, that only *unambiguous* contractual language can be applied as a matter of law to award judgment on the pleadings. *See* Ans. Br. at 18 (quoting *Lillis v. AT&T Corp.*, 904 A.2d 325, 330 (Del. Ch. 2006)); *see also Cooper Tire & Rubber Co. v. Apollo (Mauritius) Holdings Pvt. Ltd.*, 2013 WL 5787958, at *4 (Del. Ch. Oct. 25, 2013) ("When analyzing a contract on a motion for judgment on the pleadings, this Court will grant such a motion only if the contract provisions at issue are unambiguous."). Conversely, the trial court must deny judgment on the pleadings if the contract at issue is ambiguous. *See ITG Brands, LLC v. Reynolds Am., Inc.*, 2019 WL 4593495, at *9 (Del. Ch. Sept. 23, 2019) ("When a contractual provision is ambiguous, judgment on the pleadings is not appropriate to resolve the ambiguity."); *Cooper Tire & Rubber Co.*, 2013 WL 578958, at *4 ("[I]f both [parties'] interpretations of the [contract] are reasonable, then [defendant's] Motion for Judgment on the Pleadings must be denied, and the Court must determine the intent of the parties at trial.").

Notwithstanding SM's claims to the contrary, the Operating Agreement does not, by explicit and unambiguous language, prohibit the Managing Member's removal. The terms cited by SM and the Court of Chancery to support their

interpretation – Section 6.1, Section 13.3, and the Operating Agreement's definition of "Managing Member" – say nothing about removing or replacing the Managing Member. *See* A52; A68; A89. On their face, these provisions do nothing more than (i) identify SM as the Managing Member, (ii) authorize the Managing Member (but not SM specifically) to manage the Company's business, and (iii) require a written instrument executed by all Members (but not SM and Saadia specifically) to amend the Operating Agreement. *See id.* In actuality, therefore, SM and the Court of Chancery *infer* from these independent and unrelated terms a clear and unambiguous intent to prohibit the Managing Member's removal under any circumstances.

Specifically, SM divines from nothing more than the Operating Agreement's definition of "Managing Member" that "[t]here is *no question* that the parties agreed that SM – and only SM – would be the Company's Managing Member." Ans. Br. at 19 (emphasis added). Of course, the language in question says only "'Managing Member' means SM" (A52) and does not explain how long the Managing Member serves or when it can be changed. Indeed, there is no language *at all* in the Operating Agreement addressing these matters. In the absence of explicit terms, one can hardly say "there is no question" about the parties' intent.

According to SM, Saadia is a sophisticated party and, as such, it should be held to its agreed-upon contracts. *See* Ans. Br. at 17-18, 24-25. This principle, however, cuts both ways – if SM truly intended that it should serve as Managing

Member in perpetuity, then it could have insisted upon language explicitly prohibiting its removal from that position, but it did not. As Saadia explained in its opening brief (cited as "Op. Br."), there are numerous provisions in the Operating Agreement that distinguish between SM and the "Managing Member" and thereby disprove SM's claim that serving as Managing Member is its exclusive domain. *See* Op. Br. at 21-22. SM does nothing to refute this, other than to argue unconvincingly that "Managing Member" and "SM" are "synonymous" (Ans. Br. at 21) – without explaining why sophisticated contracting parties would have bothered using two separate terms if they were interchangeable.[1] When the Operating Agreement is "construe[d] … as a whole, giving effect to all provisions therein," as Delaware law requires, the interpretation offered by SM and the Court of Chancery cannot be the

[1] SM misapprehends the significance of the Operating Agreement's provisions permitting SM's transferees and successors to serve as Managing Member. *See* Ans. Br. at 21-22. Under the Operating Agreement, if SM transfers its Company Interest to a permitted transferee, then the transferee "shall" be admitted as a Member. *See* A73-A75 (Op. Agr. §§ 7.2(a), 7.4(a)-(b)). The substitute Member then would be eligible to serve as the Company's Managing Member, proving that the Operating Agreement allows parties *other than SM* to hold the Managing Member position. It is not the case, as SM suggests, that Saadia could unilaterally amend the Operating Agreement following a transfer of SM's membership interest; rather, upon the transferee's admission as a Member, the Operating Agreement could not be amended without its consent. *See* A89 (Op. Agr. § 13.3 (requiring "a written instrument executed and agreed to by all of the Members" to amend the Operating Agreement)). Upon a transfer of SM's interest, 6 *Del. C.* § 18-402 would authorize Saadia and the substitute Member to appoint the new Managing Member according to their relative shares of the Company's profits.

only reasonable one. *E.I. du Pont de Nemours & Co., Inc. v. Shell Oil Co.*, 498 A.2d 1108, 1113 (Del. 1985).

Indeed, SM itself turns to extrinsic evidence to claim that "[t]he fact that the Operating Agreement does not provide for a means to remove SM as Managing Member is not an oversight." Ans. Br. at 19. In particular, SM suggests that the Court should infer from the Members' relative capital contributions and a 12-year-old unrelated federal conviction of one Saadia's principals an intent that SM would always be Managing Member and that Saadia would never hold the position. *See id.* at 20, 36.[2] By citing to this extra-contractual evidence to support its interpretation, however, SM concedes that the Operating Agreement is ambiguous. This ambiguity shows that SM was not entitled to judgment as a matter of law and that the Court of Chancery's final order should be reversed.

[2] Of course, SM fails to note that the federal conviction did not dissuade it from pursuing a joint venture with Saadia in the first place. In any event, the weight this evidence should be given is for the Court of Chancery to determine, following remand of this action, at a trial to resolve the Operating Agreement's ambiguities. In the proceeding below, Saadia opposed SM's request to file a pre-trial motion for judgment on the pleadings on the ground that Saadia's claims could not be decided as a matter of law without considering extrinsic evidence. *See* A910-A911; A1260-A1264. Had SM agreed to proceed directly to trial to resolve all contested issues of fact and law, as Saadia proposed, that trial would have taken place by now.

II. SECTION 18-402 OF THE LLC ACT GOVERNS IN THE ABSENCE OF EXPLICIT LANGUAGE PROVIDING FOR THE MANAGING MEMBER'S REMOVAL.

At their essence, Saadia's and SM's arguments turn on competing interpretations of the Operating Agreement's omission of explicit language defining when and how the Company's Managing Member may be removed. Under the interpretation offered by SM and the Court of Chancery, Saadia should be assumed to have agreed that SM will serve as Managing Member in perpetuity unless the Operating Agreement expressly provides for the Managing Member's removal. Under Saadia's interpretation, the absence of language articulating a process by which the Managing Member may be removed is a "gap" in the Operating Agreement that is addressed by the LLC Act's default statutory standards for the Company's governance. Saadia's interpretation is the only one consistent with the intent of the LLC Act, which is "to provide members with broad discretion in drafting the Agreement and to furnish default provisions when the members' agreement is silent." *Elf Atochem N. Am., Inc. v. Jaffari*, 727 A.2d 286, 291 (Del. 1999). SM's interpretation, which views silence in the Operating Agreement as an implied agreement *not* to permit the Managing Member's removal, runs contrary to this principle.

The LLC Act states that "if a limited liability company agreement provides for the management, in whole or in part, of a limited liability company by a manager,

the management of the limited liability company, to the extent so provided, shall be vested in the manager who shall be chosen in the manner provided in the limited liability company agreement." 6 *Del. C.* § 18-402. The statute further states that, subject to the manager's right to resign, "a manager shall cease to be a manager as provided in a limited liability company agreement." *Id.*

SM argues that applying Section 18-402 would "modify the express terms of the parties' agreement" (Ans. Br. at 22), but in reality, the Operating Agreement contains *no* terms – express or otherwise – providing a "manner" by which the Managing Member "shall be chosen" or defining when "a manager shall cease to be manager." Therefore, while the LLC Act *permits* members to contractually articulate processes for selecting and removing a manager, where (as here) the governing agreement does not do so, Section 18-402 logically provides a default mechanism giving members holding a majority interest in the LLC's profits the final say in choosing who manages their investment. If the default statutory power to manage an LLC resides with the members, then the members also should retain the power to select a manager if they do not otherwise agree to a method for doing so. *See Lola Cars Int'l Ltd. v. Krohn Racing, LLC*, 2009 WL 4052681, at *3 (Del. Ch. Nov. 12, 2009) (recognizing that 6 *Del. C.* § 18-402 "by default grants control of a limited liability company to its members in proportion to their respective equity interests, with a controlling authority inuring to those members owning a majority

of such interests, unless … otherwise stated in the operating agreement").[3] Of course, the members are free to agree otherwise, but the majority should not be seen as *surrendering* their statutory management right in the absence of an explicit agreement. The approach favored by SM and the Court of Chancery turns on its head the intent of the LLC Act, which (like Delaware's Limited Partnership Act) is designed to "furnish answers … in situations where the partners have not expressly made provisions in their partnership agreement." *Elf Atochem N. Am., Inc.*, 727 A.2d at 291 (quoting Martin I. Lubaroff & Paul Altman, *Delaware Limited Partnerships* § 1.2 (1999)).

SM's observation that the LLC Act does not *require* members to "include removal provisions in LLC agreements" (Ans. Br. at 23) is irrelevant; the LLC Act is intended not to dictate how members are to govern themselves, but to offer answers to questions that the members have not addressed explicitly in their contract. The issue before the Court is how member-managed LLCs should be governed when the members' contract does not state, as Section 18-402 permits, how the manager is "chosen" or "shall cease to be a manager." Adopting a default rule in such situations that *prohibits* members holding a majority of interests in the LLC's profits

[3] SM's attempt to distinguish the Court of Chancery's opinion in *Lola Cars* (Ans. Br. at 26) is unavailing. While that opinion did not specifically consider Section 18-402's application for removing a manager, the Court's view that the statute ultimately vests control of an LLC in its members, in the absence of express contractual language stating otherwise, is applicable here.

from changing the manager goes against the primacy of equity holder voting rights that Delaware law has recognized for decades. *See* Op. Br. at 25-26; *see also In re MONY Grp., Inc. S'holder Litig.*, 853 A.2d 661, 673 (Del. Ch. 2004) ("The shareholder franchise occupies a special place in Delaware corporation law …."). Notwithstanding SM's effort to side-step this principle as limited to corporations (Ans. Br. at 26-27), such common law foundations of Delaware corporate governance can be (and are) applied to LLCs. *See, e.g.*, *Lone Pine Res., LP v. Dickey*, 2021 WL 2311954, at *15 n.103 (Del. Ch. June 7, 2021) (recognizing that, "[b]y its silence as to the managers' fiduciary duties, [an LLC agreement] imposes the default duties of care and loyalty"); *Triple H Family Ltd. P'ship v. Neal*, 2018 WL 3650242, at *18 (Del. Ch. July 31, 2018) ("[T]he traditional duties of loyalty and care ... are owed by managers of Delaware LLCs ... in the absence of a contractual provision waiving or modifying those duties."), *aff'd*, 208 A.3d 703 (Del. 2019) (quoting *Auriga Capital Corp. v. Gatz Props., LLC*, 40 A.3d 839, 843 (Del. Ch.), *aff'd*, 59 A.3d 1206 (Del. 2012)).[4]

[4] SM's discussion of the implied covenant of good faith and fair dealing (Ans. Br. at 27) misconstrues Saadia's argument. Even though there is no claim in this action for breach of the implied covenant, it is not a "red herring"; rather, the application of the implied covenant to operating agreements is another example where extra-contractual duties arising under common law are applied to govern Delaware LLCs. *See* Op. Br. at 26.

As Saadia has explained (*see* Op. Br. at 24-25), the interpretation of Section 18-402 applied by SM and the Court of Chancery – which assumes a manager cannot be removed without express language to the contrary – is not supported by legal commentary. SM continues to quote the equivocal observation from *Symonds and O'Toole*, which the Court of Chancery also cited, that "[i]f the limited liability company agreement omits clear provisions regarding removal, *it may be argued* that a manager cannot be removed." Robert L. Symonds, Jr. & Matthew J. O'Toole, *Symonds and O'Toole on Delaware Limited Liability Companies* § 9.05[C] (2d ed. & Supp. 2022) (emphasis added). SM, however, completely ignores the same authors' acknowledgment that "the statute … does not offer an explicit answer to the question whether Section 18-402's default rule of majority member management (if applicable) authorizes removal of a manager by action to that effect taken by a controlling member or bloc of members." *Id.* (quoted at Op. Br. at 25). In short, these writings are not as definitive as SM suggests – nor, contrary to SM's assertion, has the Court of Chancery "endorsed" them. Ans. Br. at 25. As Saadia explained (and SM has not refuted), the reference to *Symonds and O'Toole* in *Llamas v. Titus*, 2019 WL 2505374, at *20 (Del. Ch. June 18, 2019), was *dicta* because the Court "never reache[d]" the question of whether "a power of appointment in an LLC agreement implied a power of removal." Op. Br. at 25.

In summary, SM offers no reason why the Court of Chancery's award of judgment on the pleadings should not be reversed. The interpretation of the LLC Act advocated by SM – unless the members explicitly agree otherwise, a Managing Member appointed when the Operating Agreement is executed can never be removed by the members acting collectively – finds no support in the statute, case law, or public policy and should be rejected.[5]

III. UNDER SECTION 18-402 OF THE LLC ACT, SAADIA HAD THE AUTHORITY TO REMOVE AND REPLACE THE COMPANY'S MANAGING MEMBER.

Since the Operating Agreement is silent as to how and when the Managing Member may be removed, the decision to change the Company's management falls to the "members in proportion to the then current percentage or other interest of members in the profits of the limited liability company owned by all of the members, the decision of members owning more than 50 percent of the said percentage or other interest in the profits controlling." 6 *Del. C.* § 18-402. For the reasons set forth in Saadia's opening brief, Section 18-402 empowers Saadia to remove and replace the

[5] The only public policy SM offers in support of its position is the LLC Act's interest in "giv[ing] the maximum effect to the principle of freedom of contract and to the enforceability of limited liability company agreements." Ans. Br. at 27 (quoting 6 *Del. C.* § 18-1101(b)). As noted above, however, Delaware law does not reflect a public interest in enforcing contractual terms that are ambiguous or to which the parties did not expressly agree – such as a non-existent prohibition on removing a Managing Member. *See* pp. 5-6 *supra*.

Managing Member because Saadia is the only member holding equity in the Company. SM's arguments do not compel a different conclusion.

First, the fact that the Operating Agreement does not distinguish between Members' interests as "debt" or "equity" is irrelevant, since "[i]t is possible that a particular investment may carry an equity label but function more like … a debt instrument." *Merrill Lynch Tr. Co., FSB v. Campbell*, 2009 WL 2913893, at *9 (Del. Ch. Sept. 2, 2009). Similarly, as SM concedes (*see* Ans. Br. at 31-32), the "Member" designation itself is not dispositive; rather, members in an LLC (like Saadia and SM did here) can agree to give themselves different economic rights in exchange for their respective investments. Among different members, these rights can have characteristics of equity, debt, or other instruments. *See JAKKS PACIFIC, Inc. v. THQ/JAKKS PACIFIC, LLC*, 2009 WL 1228706, at *2 (Del. Ch. May 6, 2009) (recognizing that a party's interest in an LLC, "though it is technically a member of the LLC, is less that of an equity owner and more akin to a licensor with rights to royalties based on sales").[6] This is why the Internal Revenue Service does not slavishly adhere to labels given to LLC membership interests when determining their tax treatment, but considers "the manner in which the partners have agreed to

[6] The Court of Chancery's observation in *JAKKS PACIFIC* – that "membership" in an LLC does not necessarily reflect equity investment but can convey other economic rights according to the members' agreement – still is relevant, even if the Court's opinion addressed a claim to inspect books and records under 6 *Del. C.* § 18-305. *See* Ans. Br. at 34-35.

share the economic benefit or burden (if any) corresponding to the income, gain, loss, deduction, or credit (or item thereof) that is allocated." Treas. Reg. § 1.704-1(b)(3)(i) (2015). To evaluate whether an LLC member holds equity or debt, the IRS "tak[es] into account all facts and circumstances relating to the economic arrangement of the partners." *Id.*

Here, SM and Saadia's materially different economic rights, rather than their nominal status as "Members," determines their voting power under Section 18-402. In this regard, the Operating Agreement is clear – unless SM exercises the Equity Conversion option, its investment is repaid with a set rate of return (like a debtholder's) and Saadia is entitled to unlimited upside after SM is repaid (like an equity holder). SM does not and cannot dispute these characteristics of the Members' respective economic interests, but instead relies upon case law viewing preferred stock as equity, rather than debt. *See* Ans. Br. at 32-33.[7] These cases are inapposite, however, because the authority granted by Section 18-402 ultimately turns on the Members' relative shares of the Company's profits. Under the Operating Agreement, Saadia receives 100% of the Company's profits, after SM is repaid, unless SM exercises its Equity Conversion option.

[7] While SM attempts to distinguish Saadia's corporate case law regarding stockholder voting rights on the ground that it is inapplicable to LLCs (Ans. Br. at 27), SM does not hesitate to cite corporate precedent to analogize its membership interest in the Company to preferred stock.

Even if SM's interpretation is correct, and the Operating Agreement's waterfall provision entitles it to a majority of the Company's profits, the Members' respective voting rights under Section 18-402 cannot be determined, as a matter of law, without considering extrinsic evidence. Under Section 5.1(b)(v) of the Operating Agreement (which applies in the absence of an Equity Conversion), SM is entitled to its preference on distributions only until it has been repaid its capital contributions plus a guaranteed return on its investment. *See* Ans. Br. at 8; A64. The record shows – and SM does not deny – that on August 3, 2021, SM caused the Company to sell the California Property for $123,353,000. *See* Op. Br. at 14; A739. The cash proceeds from this sale are more than enough to repay SM's capital contributions (which total $68.5 million, *see* Ans. Br. at 6) and any preferred return to which it is entitled. If SM's preference under Section 5.1(b)(v) of the Operating Agreement has been fully satisfied, then it is beyond debate that Saadia is entitled to 100% of the Company's profits under Section 5.1(b)(vi). *See* A64. To date, however, SM has refused Saadia's requests for books and records documenting what has happened to the Company's proceeds realized from selling the California Property. *See* Op. Br. at 14; A739. Therefore, accepting SM's interpretation of the Operating Agreement raises material issues of fact concerning Saadia's voting authority that further preclude entry of judgment on the pleadings.

Finally, SM still does not – because it cannot – offer any reason why the Members would have granted SM the Equity Conversion right if it was not intended to give SM equal *voting* rights with Saadia as well as equal *economic* rights. Put differently, unless SM were to receive enhanced voting rights in exchange for surrendering its priority distribution rights under the Operating Agreement, then SM would have no incentive to exercise the Equity Conversion option. In this way, SM's interpretation of the Operating Agreement impermissibly renders the Equity Conversion option illusory and meaningless and, therefore, it should be rejected. *See, e.g.*, *USAA Cas. Ins. Co. v. Carr*, 225 A.3d 357, 363 (Del. 2020); *O'Brien v. Progressive N. Ins. Co.*, 785 A.2d 281, 287 (Del. 2001); *Sonitrol Holding Co. v. Marceau Investissements*, 607 A.2d 1177, 1183 (Del. 1992).

CONCLUSION

For the foregoing reasons, as well as those set forth in its opening brief, Saadia respectfully requests that the Court reverse the ruling below and remand this action to the Court of Chancery for further proceedings and trial on the merits.

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The undersigned hereby certifies that on February 11, 2022, true and correct copies of the foregoing were served upon the following counsel of record via File & ServeXpress:

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