EFiled: Nov 01 2022 04:25PM EDT
Filing ID 68329780
Case Number 333,2022

IN THE SUPREME COURT OF THE STATE OF DELAWARE

JULIA HAART, Petitioner-Below/Appellant, v. SILVIO SCAGLIA, Respondent-Below/Appellee, and FREEDOM HOLDING, INC., and ELITE WORLD GROUP, LLC, Nominal Respondents-Below/Appellees.	)	No. 333, 2022 Court Below: Court of Chancery of the State of Delaware, C.A. No. 2022-0145-MTZ

APPELLANT'S OPENING BRIEF

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Dated: November 1, 2022

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NATURE OF PROCEEDINGS

Petitioner-Below/Appellant Julia Haart ("Haart") brought this action pursuant to 8 *Del. C.* § 225 and 6 *Del. C.* § 18-110, seeking an order that Respondent-Below/Appellee Silvio Scaglia ("Scaglia") invalidly removed her as a director of Freedom Holding, Inc. ("Freedom") and as a director and CEO of Freedom's wholly-owned subsidiary, Elite World Group, LLC ("EWG" and with Freedom, the "Companies"). Haart was a 50% owner of Freedom's voting stock and did not consent to Scaglia's actions.

For years Scaglia held out Haart as an equal 50% co-owner of Freedom. Scaglia memorialized the equal ownership of Freedom between himself and Haart in not one, but two, Entity Restructuring Agreements (together, the "ERAs") (one in 2019 and another in 2020). Unbeknownst to Haart, however, in connection with the formation of the Companies in 2018, Scaglia clandestinely issued 123,665 shares of Freedom preferred stock to himself, which carry voting rights equal to the number of shares of common stock into which they are convertible. When Haart discovered the preferred shares in 2020 and rightfully raised concern about the 50/50 ownership arrangement, Scaglia sought to allay Haart's anxiety through a stock power transferring half of the preferred shares to Haart. Scaglia again, however, sought to secretly maintain control by exectuing a stock power purporting to transfer one share minus 50% of the preferred stock. Scaglia's too cute by half sleight of hand was

ineffective because the ERAs had already transferred 50% of all classes of Freedom stock to Haart, including half of the preferred stock.

Eventually, Scaglia's and Haart's marriage grew irreconcilably broken, and in February 2022, Haart requested a traditional divorce. Days later, on February 7, 2022, Scaglia sent a letter to Haart accusing her for the first time of mismanagement and misappropriation of funds, and declaring his intention to remove her as CEO of EWG. A1630-32. The next day Scaglia executed a written consent on behalf of Freedom as EWG's sole member purporting to remove Haart from her positions with EWG (the "First Written Consent"). A1644-45.

Haart filed her Verified Petition on February 11. On February 13, Scaglia executed several additional and redundant written consents purporting to remove Haart as a Freedom director (A1652-54), purporting to remove Haart from all of her positions with Freedom (A1655-58), and purporting to take the same action as the First Written Consent and remove Haart from all of her positions with EWG (A1659-61) (collectively, and with the First Written Consent, the "Written Consents").

On February 28, 2022, Haart filed an Amended and Supplemental Verified Petition. A59-104. Haart sought an order holding that the Written Consents were invalid because Haart rightfully owned 50% of Freedom stock and did not consent to the actions. A102. On March 18, Scaglia filed his Verified Counterclaims, seeking competing declarations that the Written Consents were valid. A105-170.

An expedited trial occurred on April 19-20, 2022. The Court of Chancery issued its post-trial Memorandum Opinion on August 4, 2022, finding in favor of Scaglia (the "Opinion").[1] For the reasons explained herein, the decision was erroneous.

[1] *See Haart v. Scaglia*, 2022 WL 3108806 (Del. Ch. Aug. 4, 2022), attached hereto as Exhibit B.

SUMMARY OF ARGUMENT

1. The Trial Court erred by concluding that the ERAs do not unambiguously transfer 50% of all classes of Freedom stock to Haart. Ex. B at 36.

Assuming *arguendo* that the ERAs were ambiguous, the Trial Court erred in finding that the extrinsic evidence proves that the parties did not intend for the ERAs to transfer any Freedom shares. Ex. B at 36-37. The Trial Court erred in its failure to apply the well-established rule that any ambiguity must be construed against the drafter—Scaglia. The record demonstrates that Scaglia intended for the ERAs to transfer 50% of Freedom to Haart.

2. The Trial Court erred in failing to address the dispositive issue that Scaglia constructively delivered equal ownership of Freedom shares to Haart. The record demonstrates Scaglia's unmistakable intent to transfer equal ownership of Freedom, and that the transfer proceeded well past a point of no return.

3. The Trial Court erred in failing to properly analyze the doctrine of acquiescence. Ex. B at 42. The record demonstrates that Scaglia repeatedly recognized and refused to dispute his countless representations that Haart owned Freedom equally. Given Scaglia's actions, Scaglia is precluded, under the doctrine of acquiescence, from disputing Haart's equal ownership.

STATEMENT OF FACTS

A. The Parties.

Haart is a successful fashion designer, entrepreneur, author, and business executive. At nineteen, Haart was married off to a life of servitude for a man five years her senior who she barely knew. A314; A1223. Haart yearned for a different future for her and her four children, educating herself and ultimately working her way up in business and becoming the co-owner of Freedom, as well as a director of Freedom and director and CEO of EWG. *See*, *e.g.*, A317; A736; A1032-40; A1052-54; A1338. Her rise to these positions is the subject of a Netflix docuseries, *My Unorthodox Life*, and the best-selling book, *Brazen*. A313; A318; A1117-1524.

Scaglia, Haart's estranged husband, is, with Haart, a co-owner and director of Freedom, as well as a director and the non-executive Chairman of EWG. A1052-55.

B. Haart And Scaglia Form A Business And Personal Relationship.

Haart and Scaglia met in 2015, developing a close work relationship that blossomed into a romantic relationship, and the couple were engaged in early 2018. A315. At that time, Haart and Scaglia discussed the possibility of owning a business together. *See* A316-17. In particular, Scaglia would provide the financing, and Haart the "sweat equity." A317. To that end, Haart and Scaglia co-founded Freedom in November of 2018. A316-17. A Certificate of Incorporation was executed and filed on November 7, 2018, and provided, among other things, that

Freedom is authorized to issue "200 common shares with no par value." A639-41. They agreed that they would share equal ownership and control of the Elite World Group business. A316-17. The pair married in June 2019. A345.

C. Scaglia Secretly Issues Himself Preferred Stock To Maintain Control Of Freedom.

Scaglia executed and filed an Amended and Restated Certificate of Incorporation for Freedom on December 28, 2018 ("Amended Certificate"). A646-53. The Amended Certificate, among other things, authorized the issuance of 123,665 new shares of preferred stock. *Id.* The same day, unbeknownst to his fiancé and business-partner, Scaglia secretly executed a transfer between Freedom and himself whereby he contributed to Freedom the shares of his company called S.M.S. Finance S.à.r.l, and 123,665 shares (100%) of Freedom preferred stock were issued to Scaglia (the "Contribution Agreement"). A642-45; A654-58. Scaglia, desiring to remain "kingmaker" (A455), kept Haart in the dark about the Contribution Agreement and the existence of preferred stock until 2020 (A344).

D. The Corporate Instruments Memorialize The Parties' 50/50 Ownership Of Freedom.

On July 8, 2019, Scaglia transferred half of Freedom's common stock to Haart. A1881-83; A371; *see also* A1891. Haart believed Scaglia thus fulfilled his multiple promises of equal ownership, although Scaglia hid from Haart the issuance of 123,655 shares of Freedom preferred stock to himself. A344.

Scaglia wielded the equal ownership agreement to his advantage because he sought to use Haart's talents in the industry to manage and grow the Companies. Haart, believing she was an equal owner, agreed to work as CEO of EWG without an employment agreement that would otherwise have guaranteed her, among other things, a salary and severance. Instead, she agreed to a Management Agreement (A1032-40) and relied on her equal ownership of the Companies to provide her with a say in the Companies' direction and a share in the Companies' potential future financial upside.[2]

In addition to using the equal ownership agreement to his advantage with Haart, Scaglia also brandished it to try to attract public interest for the sale of EWG. EWG's value had increased exponentially under Haart's leadership, and Scaglia needed to memorialize and formalize the ownership structure of Freedom for third party purchasers. *See* A378. This resulted in the Entity Restructuring Agreement (the "2019 ERA"). A659-65. Scaglia directed his personal accountant[3] and "dear" friend,[4] Jeffrey Feinman, to prepare the 2019 ERA. A473; A490-91. Feinman backdated the 2019 ERA to April 1, 2019, to harmonize it with the earlier agreement

[2] Of course, Haart would not have agreed to forgo a salary and standard termination and severance protection had she not believed she co-owned Freedom. (A360).

[3] A473; *see also* A1662-1880 (Feinman prepared Scaglia's personal income tax returns).

[4] *See* A600; A613-17; A622-23; A625-34; A636; A1936.

for Scaglia and Haart to own Freedom equally. A743-52; A760-68; A775-76; *see also* A770-74; A817-25. Under the 2019 ERA, Scaglia and Haart agreed that each of them, as the sole stockholders of Freedom, would each own 50% of *all* of its shares. The 2019 ERA provides, in relevant part, as follows:

> WHEREAS: The Shareholders, FREEDOM and ELITE wish to restructure their business asset holdings such that the limited liability company, ELITE, shall: (a) assume ownership of One Hundred (100%) Perfect of the Stock FREEDOM owns of the ENTITIES; and (b) become a wholly owned subsidiary of FREEDOM;
>
> * * *
>
> NOW, THEREFORE: In furtherance of the plan of reorganization adopted by the parties and in consideration of the mutual covenants and agreements contained herein and for good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the Shareholders agree to fund any and all Membership Interests in ELITE into FREEDOM, all on terms and conditions as hereinafter follows:
>
> 1. Transfer:
>
> 1.1 The Shareholders agree to transfer all of their Membership Interests in ELITE to their wholly [sic] Delaware corporation known as FREEDOM, and thus change the structure of ownership ***such that FREEDOM shall be owned 50% by each shareholder***…[5]

A659-65 (emphasis added). Thus, the 2019 ERA established that Scaglia and Haart each owned 50% of Freedom.

The 2019 ERA was signed four times by Scaglia: once as President of Freedom; once as a "member" of EWG; once as a shareholder of Freedom; and once

[5] This excerpt of Paragraph 1.1 is referred to herein as the "50% Ownership Clause."

in Exhibit A to the 2019 ERA, wherein he and Haart assigned any and all interests in EWG as of April 1, 2019 to Freedom. A663; A665. Despite signing it four times, Scaglia testified that he did not read the 2019 ERA. A437-38.

E. The Parties Correct The "Errors" In The 2019 ERA By Entering Into The 2020 ERA, But Leave Intact The 50% Ownership Clause.

The initial attempts to sell EWG did not come to fruition, but renewed interest in a SPAC transaction materialized in 2020. In connection with this renewed interest, EWG's then-CFO, Mark O'Brien, attempted to correct the errors in the 2019 ERA. A438; A753-59. On September 14, 2020, O'Brien sent the proposed revisions to Feinman (who drafted the 2019 ERA) in order to "achieve the outcome that I believe was the original intention." A753-59. The proposed revisions included approximately nineteen handwritten edits to the three-page 2019 ERA, including:

- Clarifying that Freedom, not EWG, was the owner of the related entities prior to the restructuring;
- Adding the "ENTITIES" as a defined term;
- Adding that Elite shall "assume ownership of One Hundred (100%) Percent of the stock of the ENTITIES";
- Replacing erroneous references to Freedom in Whereas Clauses with Elite;
- Revising Section 1 (the "Transfer Provision"), to refer to the defined term ENTITIES, ***while leaving the 50% Ownership Clause untouched***;
- Adding Paragraph 1.3 to the Transfer Provision, which provided that "FREEDOM shall execute all necessary documents to

complete the transfer of the stock ownership in the ENTITIES to ELITE."

A754-59. Despite the revisions, which also included a number of edits pertaining to ownership percentages of Elite entities, the 50% Ownership Clause was not revised, reworked, or deleted. *Id.* Scaglia again signed the 2020 ERA four times, confirming that the 2020 ERA achieved the outcome that was the "original intention" of the 2019 ERA. A827; *see also* A753-59; A769; A770-74; A826; A828-35.

F. Scaglia Publicly And Privately Represents That Haart Owns 50% Of Freedom.

In addition to the plain language of the ERAs, Scaglia repeatedly represented to Haart, investors, potential buyers, the Delaware Secretary of State, and federal authorities under the penalty of perjury, that Haart was an equal 50% owner of Freedom. Examples of these various representations are categorized below.[6]

1. 50/50 Representations In Official Corporate Documents.

Date/Citation	Description
11.20.2019 A660; A724-34	2019 ERA, stating: "The Shareholders agree to transfer all of their Membership Interests in ELITE to their wholly [sic] Delaware corporation known as FREEDOM, and thus change the structure of ownership ***such that FREEDOM shall be owned 50% by each shareholder***."
09.14.2020 A753-59	Email proposing revisions to the 2019 ERA to "achieve the outcome that I believe was the original intention." A753. The attached handwritten markup (A754-59) contains approximately nineteen revisions, yet the 50% Ownership Clause is unchanged. A754-59. This version was adopted, with the changes, as the 2020 ERA.

[6] All emphases added unless otherwise noted.

Date/Citation	Description
09.25.2020 A828-39	2020 ERA, with the 50% Ownership Clause from the 2019 ERA unchanged.
09.25.2021 A1052-60	Minutes of the Special Joint Meeting of the Shareholders and Directors of Freedom Holding, Inc., listing Haart and Scaglia as equal owners and signed by Scaglia and Haart: Shareholder Name | Address | Stock % | B/O/D SILVIO SCAGLIA | 70 Vestry Street, PHS, New York, NY 10013 | 50% | Yes JULIA HAART | 70 Vestry Street, PHS, New York, NY 10013 | 50% | Yes *See* A1052-55; A1056-60; *see also* A336; A375.

2. 50/50 Documents Submitted Under Penalty Of Perjury Or Otherwise To Be Submitted To Governments.

Date/Citation	Description
09.24.2020 A777-816	Letter from EWG general counsel Ayisha Morgan to the United States Citizenship and Immigration Services ***attaching a copy of the ERA to evidence EWG's corporate relationships***. A779. *See* A446-47.
10.15.2020 A876-910; A985-1018	Email from Paolo Barbieri, director of Freedom and a longtime close partner of Scaglia's, to Haart (A876) forwarding a D&O insurance questionnaire for Haart, prepared by Barbieri at Scaglia's request (A840), including the following answers (A877-910; A985-1018): Page 9: Question 4(a): ". . . ***identify the natural person(s) who ultimately control the shareholding entity***." Answer: "***Silvio Scaglia 50% - Julia Haart 50%***." Pages 9-10: Question 4(b): "Please state the amount of each of the following securities of the Company … of which you were the 'beneficial owner…'", and "***Total number of membership interest 'beneficially owned' by you***." Answer: "***50%***."

Date/Citation	Description
10.15.2020 A876-910; A985-1018 (cont.)	Page 11: Question: "***If you share voting or investment power*** with respect to any such securities, please briefly describe the … basis on which your voting or investment power is shared and the number of shares … beneficially owned by you…." Answer: "***Silvio Scaglia 50% - Julia Haart 50%***." Page 11: Question: "Please describe any significant changes in your ownership of the Company's securities since January 1, 2016." Answer: "***In April 2019 50% of Freedom Holding shares have been transferred from Silvio Scaglia (who owned previously 100%) to Julia Hendler (now Julia Haart)***." *See* A323-25; A335-36; A357-58; A482-83; A492-96; A497-98.
10.15.2020 A911-46	Email from Barbieri to Scaglia (A911) forwarding a D&O insurance questionnaire (A912-46) and requesting Scaglia's approval, including the same questions and answers as set forth above (A877-910), except the answer concerning voting or investment power was drafted as follows: Answer: "***Silvio Scaglia 50% - Julia Haart 50% - SPECIAL VOTING RIGHTS?"***[7] A922. *See* A482-83 (Barbieri testified that he copied and pasted answers related to Haart and Scaglia's ownership because he "thought everything was the same"); A495.
12.21.2020 A1019	Schedule G to Freedom's 2020 tax return, prepared by Feinman and signed by Scaglia. The tax return listed Scaglia and Julia Hendler (Haart) as equal owners of voting stock, both owning "50% or more of the total voting power of all classes of the corporation's stock entitled to vote…" A1019.

[7] Barbieri included "SPECIAL VOTING RIGHTS" when sending to Scaglia on October 15, 2020, but the phrase was omitted from the final version. *Compare* A912-46 *with* A949-83.

Date/Citation	Description
11.09.2020 A947-83	Email from Barbieri to attorney Gary Moomjian (A947-48), with copies to Scaglia, Haart and others, attaching Scaglia's final D&O questionnaire draft: "Dear Gary, Please find attached ***Silvio's D&O questionnaire draft (he checked it and is fine with it)***." *Compare* A949-83 *with* A877-910 (includes the same questions and answers regarding equal ownership). *See* A392-93; A448-50; A452.
09.08.2021 A1048-51	Email from Barbieri to Scaglia's assistant Serdsev (A1048-49) requesting signatures on attached "***Declaration of the Beneficial Owner***" for Freedom (A1050-51): "Beneficial Owner No. 1: Number of Shares: 50%" (for Scaglia); "***Beneficial Owner No. 2: Number of Shares: 50%" (for Haart)***. The Declaration was required pursuant to European law. A1050. *See* A329-30; A388.

3. 50/50 Representations To Investors, Financiers, Lenders, And Auditors.

Date/Citation	Description
10.31.2019 A681	Email from Scaglia to financing broker Barnitt, copying Barbieri and Feinman, attaching EWG's final 2018 pro forma financial statements (prepared in late 2019). A666. The financials state that Freedom is "a US holding company owned by Silvio Scaglia (50%) and Julia Haart (50%)." A681.
10.06.2020 A843-75	Email from Mark O'Brien to various associates at Marcum LLP, who was conducting a PCAOB audit of EWG in connection with a potential going-public transaction (A337; A438) attaching corporate documents including the 2020 ERA (A869-875). *See* A337-38; A447-48.

Date/Citation	Description
03.16.2021 A2322-34	Email chain regarding application for PPP loan from Chase Bank forwarding Chase's response and the application and representing the ownership structure as of March 15, 2021, as: Name | TIN | Employees | Nature of Relationship Julia Hendler Haart | [redacted] | NA | Owns 50% of Freedom Holding Inc. Silvio Scaglia | [redacted] | NA | Owns 50% of Freedom Holding Inc. A2327. *See also* A492 (Barbieri testifying that the ownership statement makes no reference to or distinction between any class of shares). The application includes Schedule G to Freedom's 2020 Tax Returns, which represented Scaglia and Haart as equal owners of Freedom. A2333.
05.04.2021 A1041	Email from Scaglia to Chris Cottrell, a managing director of investment bank Jefferies: "***Julia and I own an equal share of EWG through our own common holding company***. Julia is the CEO and the real force behind EWG success and stature in the industry. I am the non executive [sic] Chairman." *See* A440-44.
07.21.2021 A1044 & A1046-47	Email from Robert Zaffiris, EWG CFO, to Scaglia and Haart re: "FW: Porter Application" attaching loan application form. A1042. The application includes: "Principal Owner(s) Information," declaring "Ownership %" for Haart and Scaglia, respectively, as follows: "***Julia Haart … 50%***; ***Silvio Scaglia … 50%***."
09.08.2021 A1061-69	Email chain between Zaffiris, Feinman, and associates at DDK re: "Ownership Percentages." Zaffiris needed "to prove to the auditors our ownership percentages." A1063; A1069. Ravneet Sodhi at DDK reviewed corporate documents, and "[f]ound the attached for the various Corps/LLCs that would indicate ownership and shareholders/members" including: Freedom – "***Post restructure, the same stock is 100% jointly owned by Julia and Silvio***." EWG – "***joint ownership Silvio & Julia***." Feinman forwarded this interpretation to Zaffiris. A1061-64; A1065.

Date/Citation	Description
11.11.2021 A1070-77	Email from Marcum LLP to Zaffiris, noting "I think the attached may cover the control issue" (A1070)—attaching 2020 ERA. A1071-77.
12.03.2021 A1078-1112	Marcum LLP PCAOB audit letter including EWG 2018, 2019, and 2020 consolidated financial statements. Note 11—Related Parties—provides that "***Freedom is owned by the Company's Chairman [Scaglia] and its CEO [Haart]***, neither of whom are compensated by the Company for their services." A1109.
01.07.2022 A1115-16	Email from Zaffiris to accounting firm PwC (who had requested an "org chart" and ownership percentages (A1113-14)), with copies to Scaglia, Haart, and others, stating: "***You'll note Freedom Holdings is owned 50/50 by Silvio and Julia and in turn Freedom owns EWG***. …" *See* A327.
01.28.2022 A1525-28	Email from Barbieri to Serge Marion, sending the Declaration of Beneficial Ownership, signed by Scaglia and Haart in October 2021 (A1050-51).
02.01.2022 A1529-1603	Email chain between Barbieri and GFA Leasing, attaching numerous documents, including Barbieri's January 31, 2022 signed declaration (in Italian) that, translated, provides: "***We hereby declare that … Silvio Scaglia and Julia Haart control the company indirectly, through the Freedom Holding Company, Inc.*** … Mr. Silvio Scaglia owns 50% of the shares of Freedom Holding, Inc. ***Ms. Julia Haart owns 50% of the shares of Freedom Holding, Inc.***" A1553.
02.07.2022 A1633-37	Email forwarding communications between Feinman and mortgage banker Raveis, including the following statement made by Feinman on ***the same day on which Scaglia began his adverse actions against Haart*** that are the subject of this litigation: "***Melissa, Freedom is owned by Julia and Silvio equally***. They do take a 2% management fee in lieu of salary." A1635. *See* A451.

G. In 2020 Haart Discovers Scaglia's Underhanded Attempts To Secretly Hold Control Of Freedom.

Throughout their marriage, Scaglia proved persistently untrustworthy. A332; A349-50. In March-April 2020, when a sale of EWG in a SPAC transaction was under consideration, Scaglia admitted to Haart that he had issued 123,665 shares of Freedom preferred stock to himself. A344. Stunned, Haart confronted Scaglia about this betrayal. *See* A333; A345. Scaglia apologized, promised to correct this purported inequity (despite the 2019 ERA having already done so), and the parties reconciled. *See* A345.

In May 2020, Scaglia directed Feinman to memorialize the transfer of 50% of shares to Haart (again, despite having already effectively transferred equal shares through the ERA), and to include her in his will. A616-17; A462. In connection therewith, Scaglia directed Feinman to execute a stock power ("Stock Power"). A381; A1927-28. Again, unbeknownst to Haart, the Stock Power, which purported to transfer 61,832 shares of Freedom preferred stock to Haart and leave Scaglia with a 1 share advantage of 61,833, was duplicitous and contradicted both Scaglia's stated intent and the transfer of equal ownership set forth in the 2019 ERA. A737-42; A333. Haart, however, was promised that this action confirmed the equal ownership structure that she and Scaglia agreed to in the 2019 ERA. A333.

When the 2020 ERA was executed later that year, reaffirming the transfer of 50% ownership to Haart as set forth in the 2019 ERA, Haart thus believed that

beyond any doubt, she was an equal owner of Freedom. *See, e.g.*, A333; A344; A348-49. Indeed, throughout the rest of 2020, the 2020 ERA was repeatedly presented to third parties as proof that Freedom was co-owned equally by Haart. *See, e.g.*, A779; A843; A887 (D&O questionnaire answering that the ERA transferred 50% of Freedom shares to Haart); A922 (same); A959 (same); A995 (same).

Having seemingly resolved the 50% ownership issue, Haart focused on growing EWG, which under Haart's leadership grew from $90 million to receiving valuations of $1 billion. A459.

H. In 2021, The Marriage Deteriorates.

In January 2021, Haart and Scaglia's marriage was teetering again. A361. Haart sought to review certain corporate documents and was assured of her equal ownership in Freedom. A1024; A1020-22. Haart texted EWG's lawyer, Brian Cousin, who requested she send him "whatever we can [get]" of Freedom documents. A1028. Haart asked Feinman to send the documents to Cousin and confirmed via text that he was indeed "100000% sure" that Haart owned "half of everything." A1024; A333. Feinman gathered and forwarded Scaglia's will with the Stock Power attached, which by no means was a comprehensive compilation of the corporate documents. A1023. Questioning the apparent discrepancy between the ERAs, which explicitly transferred her 50% of Freedom, and the one share

inequity in the Stock Power, Haart asked Cousin and Feinman to reconcile the inconsistencies. A1023-27; A1028-31. Cousin informed her that if the Stock Power were the only corporate document, she may own only 49.9% of Freedom, but informed her that he needed to "examine the corp docs [sic] to understand the full extent of [Haart's] rights."[8] A1028-31. Those corporate documents, of course, include the ERAs, tax returns, D&O questionnaires, and a litany of other representations that Haart owned Freedom equally (which Cousin had not yet reviewed). *See, e.g.*, *supra* at 10-15. Feinman, who Haart "trusted with everything in [her] life," called Haart, told her that the ERAs rendered the Stock Power irrelevant, and assured she was an equal owner. A362.

I. Scaglia Vindictively Attempts To Invalidly Remove Haart From Freedom And EWG.

Haart announced her intent to leave Scaglia on February 3, 2022. *See* A1604-23. Before then, there was no indication that Scaglia had any issues with Haart's role as EWG CEO. *See, e.g.*, A1625 (Scaglia discussing multiple business ideas with Haart on February 3 mere hours before she informed him of her decision). The record contains no evidence of issues regarding Haart's performance as CEO until February 7, 2022—days after Haart announced her intent to divorce. *Compare*

[8] Several days later, Haart again requested these documents reflecting 50% ownership from Feinman, who also served as the custodian of corporate records for Freedom (A1943). *See* A1022.

A1624-25 *with* A1630-32; A1649-50; A1651. However, once Haart informed Scaglia that the marriage was over, he turned against her. Scaglia executed the Written Consents, purporting to fire Haart from her positions at EWG. A297; A1630-32; A1638-43. Scaglia also attempted to strongarm EWG CFO Robert Zaffiris into auditing Haart for alleged unauthorized expenses, with Zaffiris responding, "I can't be on board that these expenses were not approved as I was at the board meeting when they were approved." A1649-50. Haart's purported termination was retaliation by Scaglia and was ineffective under the parties' 50/50 ownership structure.

ARGUMENT

I. THE COURT OF CHANCERY ERRED IN FINDING THAT THE ERAS DO NOT TRANSFER 50% OF ALL FREEDOM STOCK TO HAART.

A. Question Presented

Did the Court of Chancery err in finding the ERAs did not transfer equal ownership of all classes of Freedom stock to Haart, despite their plain language, and the abundance of extrinsic evidence showing the parties' intent to transfer equal ownership?

The issues were preserved for appeal in Haart's Pre-Trial Brief (A265-66) and Post-Trial Brief (A576-83).

B. Standard And Scope Of Review

This Court reviews questions of law and interprets contracts *de novo*. *Osborn v. Kemp*, 991 A.2d 1153, 1158 (Del. 2010).

C. Merits Of Argument

"It is a court's duty to preserve to the extent feasible the expectations that form the basis of a contractual relationship." *Eagle Indus., Inc. v. DeVilbiss Health Care, Inc.*, 702 A.2d 1228, 1233 (Del. 1997). The plain language of the ERAs intended to effectuate several changes to Freedom and EWG—predominantly, the transfer of 50% of Freedom to Haart; and the restructuring or reorganization of Freedom and EWG. The ERAs state: "The shareholders agree to transfer all of their Membership Interests in ELITE to their wholly [owned] Delaware corporation known as

FREEDOM, and thus change the structure of ownership ***such that Freedom shall be owned 50% by each shareholder***." A660; A830 (emphasis added).

The unambiguous 50% Ownership Clause of the ERAs can only reasonably be interpreted to mean that Haart and Scaglia each own 50% of all classes of Freedom Stock. However, even if the ERAs are ambiguous, the extrinsic evidence supports the conclusion that the ERAs mean what they say. The record is replete with evidence where Scaglia, his subordinates, or both, state that Haart is an equal, 50% owner of Freedom. *See supra* at 10-15.

1. The Court Of Chancery Erred In Holding That The Plain Language Of The ERAs Does Not Grant Haart 50% Of All Classes Of Freedom Stock.

The Trial Court erred in holding the ERAs did not transfer equal ownership of all types of Freedom stock to Haart, despite their plain language. *See Norton v. K-Sea Transp. Partners L.P.*, 67 A.3d 354, 360 (Del. 2013) ("We give words [in a contract] their plain meaning unless it appears the parties intended a special meaning.").

Two fully-executed ERAs acknowledge that Scaglia and Haart own 100% "of the stock of all classes of capital stock" of Freedom. A659; A829. They unambiguously state that "FREEDOM shall be owned 50% by each shareholder"—that Scaglia and Haart are to be equal 50% shareholders of the stock of Freedom. A660; A830. The ERAs reflect an agreement that the parties would equally share

both common and preferred shares of Freedom, in addition to restructuring the Freedom entities.

The ERAs are governed by New York law. Both New York and Delaware follow the "traditional contract law principles that give great weight to the parties' objective manifestations of their intent in the written language of their agreement." *In re IBP, Inc. S'holders Litig.*, 789 A.2d 14, 54 (Del. Ch. 2001); *Brad H. v. City of N.Y.*, 951 N.E.2d 743, 746 (N.Y. 2011).

Section 1.1 of the ERAs provides:

> The Shareholders agree to transfer all of their Membership Interests in ELITE to their wholly [sic] Delaware corporation known as FREEDOM, and thus change the structure of ownership such that ***FREEDOM shall be owned 50% by each shareholder***.

A660; A830 (emphasis added). The statement "Freedom shall be owned 50% by each shareholder" is unambiguous. It does not specify that only 50% of the common stock will go to Haart. While Scaglia may wish the ERAs specified that Haart owned *only* 50% of Freedom's common stock, they do not. Absent such language, the ERAs state that Haart and Scaglia own 50% of Freedom. "[I]t is not the job of a court to relieve sophisticated parties of the burdens of contracts they wish they had drafted differently but in fact did not. Rather, it is the court's job to enforce the clear terms of contracts." *DeLucca v. KKAT Mgmt., L.L.C.*, 2006 WL 224058, at *2 (Del.

Ch. Jan. 23, 2006). By ignoring the objective meaning of the contracts' language, the Trial Court erred in its reading of the ERAs.

The ERAs were used, repeatedly, to represent to potential investors, as well as the government, both the reorganized structure of Freedom and EWG ***and their ownership***. Indeed, Scaglia instructed Barbieri to draft multiple D&O Questionnaires—less than a year after the execution of the 2019 ERA and several weeks after the execution of the 2020 ERA—affirmatively endorsing the intent and effect of the ERAs. *See* A876-946; A947-1018. Those questionnaires, signed by Scaglia, state: "In April 2019 50% of Freedom Holding shares have been transferred from Silvio Scaglia (who owned previously 100%) to Julia Hendler (now Julia Haart)." A887; A922; A959; A995. The only reasonable interpretation is that the ERAs were intended to, and did, transfer 50% of Freedom to Haart. *Id.*; *see also* A753-59 (O'Brien confirming that the 2020 ERA achieves the "outcome that … was the original intention" of the 2019 ERA).

The Trial Court erroneously found that the "ERAs' function is consistent with their title: restructuring the business by transferring the Entities from Freedom to EWG, and ensuring EWG was fully owned by Freedom." Ex. B at 36. The Trial Court pointed to certain recitals in the Transfer Provision supporting this conclusion—but at the same time found that the Transfer Provision is "nonsense" and that recitals relating to ownership were "meaningless." *Id.* Ex. B at 33. Yet,

despite finding that the Transfer Provision contained conflicting recitals and lending appropriate weight to each provision, the Trial Court found that Sections 1.2 and Sections 1.3 of the 2020 ERA were proper—extinguishing Section 1.1 and rendering the 50% Ownership Clause superfluous.

The failure to apply the plain and unambiguous language of the ERAs impermissibly deletes from Haart's bargained-for rights, which constitutes reversible error. *See, e.g., In re Shorenstein Hays-Nederlander Theatres LLC Appeals*, 213 A.3d 39, 61-64 (Del. 2019) (the Court of Chancery erred in ignoring language of a contract term); *Brainard v. N.Y. Cent. R.R. Co.*, 151 N.E. 152 (N.Y. 1926) (New York court erred in looking to extrinsic evidence of the parties' intent because the agreement was unambiguous). An interpretation rendering the relevant contractual provisions meaningless is contrary to both Delaware and New York law. *Cf. Two Guys from Harrison-N.Y., Inc. v. S.F.R. Realty Assocs.*, 472 N.E.2d 315, 318 (N.Y. 1984) ("In construing a contract, one of a court's goals is to avoid an interpretation that would leave contractual clauses meaningless."); *In re Shorenstein Hays-Nederlander Theatres*, 213 A.3d at 56 ("We interpret contracts 'as a whole and we will give each provision and term effect, so as not to render any part of the contract mere surplusage,' and 'will not read a contract to render a provision or term meaningless or illusory.'") (citation omitted). The Trial Court even acknowledged that it is "unusual and undesirable to construe contractual language to mean

something that is both meaningless and false" before reaching that unsupported result. Ex. B at 35.

In addition, the evidence that objective, reasonable third parties in fact construed the ERAs as transferring 50% ownership to Haart emphasizes the Trial Court's erroneous interpretation. *See, e.g.*, A1061 (Ravneet Sodhi at DDK—the accounting firm employed by Scaglia—reviewing Freedom corporate documents and finding that "post restructure" Freedom and EWG are "jointly owned by Julia and Silvio."); A2066 (same). "The primary rule of construction is: [W]here the parties have created an unambiguous integrated written statement of their contract, the language of that contract (not as subjectively understood by either party but) as understood by a hypothetical reasonable third party will control." *Meritxell, Ltd. v. Saliva Diagnostic Sys., Inc.*, 1998 WL 40148, at *6 (S.D.N.Y. Feb. 2, 1998) (quoting *U.S. W., Inc. v. Time Warner Inc.*, 1996 WL 307445, at *9 (Del. Ch. June 6, 1996)).

2. The Court Of Chancery Erred In Concluding That To The Extent The ERAs Are Ambiguous, Extrinsic Evidence Showed That The Parties Did Not Intend For The ERAs To Transfer Any Shares.

The court below also erred in holding that to the extent the ERAs are ambiguous, "the extrinsic evidence in the record proves the parties did not intend them to transfer any Freedom shares." Ex. B at 36-37.

(a) Any Ambiguity In The ERAs Must Be Construed Against Scaglia.

The Trial Court found numerous issues with the preparation of the ERAs, yet failed to account for the important fact that Scaglia and his associates prepared the documents. It is black letter law that, "[i]n cases of doubt or ambiguity, a contract must be construed most strongly against the party who prepared it and favorably to the party who had no voice in the selection of its language." *67 Wall St. Co. v Franklin Nat'l Bank*, 333 N.E.2d 184, 187 (N.Y. 1975). The Trial Court's failure to do so here constitutes reversible error. *See Mejia v. Trustees of Net Realty Holding Tr.*, 304 A.D.2d 627, 629 (N.Y. App. Div. 2003) (reversing where ambiguity was not properly construed against drafter). Not only did the Trial Court fail to apply or address this principle in its Opinion, it incorrectly placed the burden on Haart, despite ample evidence that Scaglia (along with Barbieri) directed Feinman, his friend and personal accountant, to draft the ERAs to effect the transfer of Freedom ownership. A473; A490-91.

(b) The Extrinsic Evidence Overwhelmingly Confirms Haart's 50% Ownership Of Freedom.

Even in a neutral light, the extrinsic evidence does not support the Trial Court's conclusion. "To 'give sensible life to [the] contract,' this Court looks to the 'overall scheme or plan' of the agreement and the basic business relationship between [the] parties." *OptiNose AS v. Currax Pharms., LLC*, 2021 WL 5071885,

at *7 (Del. 2021) (citation omitted). The Opinion recognizes that Scaglia made numerous contemporaneous representations "indicating Scaglia and Haart were equal or fifty-fifty partners in Freedom" since "as early as 2018 and October 2019." Ex. B at 39. The Opinion also recognized that extrinsic evidence facially "suggests the ERAs effectuated [the stock] transfer." *Id.* at 38. The Trial Court even acknowledged that the idea that "Haart and Scaglia equally owned Freedom was widespread enough that it was repeated by EWG employees." *Id.* at 40. Accordingly, the "sensible life to the contract" supports Haart's interpretation.

Yet, the Opinion erroneously focused on the sloppy draftsmanship of the ERAs as evidence that the ERAs did not purport to transfer 50% of Freedom Stock.[9] Moreover, the Trial Court misinterpreted the evidence and Haart's arguments in finding that "Haart's own narrative is extrinsic evidence that the 2019 ERA did not transfer half of Freedom's equity to her." Ex. B at 37. The record clearly contradicts this interpretation—Haart's "narrative" is that years later, she discovered the Stock Power which she viewed as inconsistent with the parties' agreement, and when she asked her advisors (including the author of the Stock Power), she received

[9] The Trial Court's interpretation that the 50% Ownership Clause is a "meaningless incorrect recital" is erroneous. Ex. B at 33. Even so, the burden of any shoddy draftsmanship must be borne by Scaglia as the drafter, and any ambiguity must be interpreted in favor of Haart. *67 Wall St. Co.*, 333 N.E.2d at 187.

assurances that she owned 50% of Freedom. *See, e.g.*, A1020-22; A1044; A1047; A1635; *see also supra* at 17-18.

Indeed, the record is replete with instances where Scaglia—or individuals at his direction—represented that Haart owns 50% of Freedom in this later period. *See supra* at 10-15. For example, the November 2020 D&O questionnaire signed and reviewed by Scaglia stated that "[i]n April 2019 50% of Freedom Holding shares have been transferred from Silvio Scaglia (who owned previously 100%) to Julia Hendler (now Julia Haart),"[10] in a clear reference to the ERAs. A959. Likewise, Scaglia executed Freedom minutes on September 25, 2021 confirming the 50/50 ownership of Freedom. A1056-60. Similarly, Scaglia emailed a potential investor at Jefferies, "Julia and I own an equal share of EWG through [our] own common holding company." A1041. These non-exhaustive examples show the clear and unambiguous intent that Haart and Scaglia own Freedom 50/50 (as memorialized in the ERAs). The Trial Court even acknowledged as such—because the ERAs were backdated to April 1, 2019, "facially, this statement suggests the ERAs effectuated this transfer." Ex. B at 38. The Trial Court's analysis, however, fell short of the correct finding, and adopted Scaglia's unsupported narrative.

[10] Barbieri, who drafted the D&O questionnaire, testified that he recalled Feinman—the preparer of the 2019 ERA—informing him that 50% of shares were transferred in April, 2019. A483.

(c) Scaglia Offers No Credible Extrinsic Evidence That Could Support The Trial Court's Conclusion.

The plain language of the ERAs establishes Haart's 50% ownership interest in Freedom, as confirmed by the abundance of extrinsic evidence. Scaglia attempts to avoid this outcome through two main arguments: (1) discrediting the ERAs; and (2) relying on a handful of text messages. *See* A379; A437-38. Neither of these arguments are credible, and the Trial Court erred in adopting them. *See CDX Holdings, Inc. v. Fox*, 141 A.3d 1037, 1042 (Del. 2016) ("The clearly erroneous standard applies to factual determinations based on credibility and the evidence."); *Badr v. Hogan*, 554 N.E.2d 890, 891 (1990) (trial court committed reversible error as to testimony regarding party's credibility).

(i) Scaglia Chose Inconsistent Testimony To Avoid Admitting His Betrayal.

Scaglia attempts to avoid the plain language of the ERAs by calling into question their legitimacy. Indeed, early in the litigation Scaglia claimed that his four signatures on each ERA were fraudulent. A222-24 (Second and Fifth Affirmative Defenses) (claiming Haart knew that the ERA "bears a falsified signature of Respondent").[11] At trial, Scaglia initially resisted the truth, but later admitted that

[11] Scaglia likewise falsely alleged that Haart may have "either forged or caused someone to forge [his] signature" on the Stock Power" (A223) and testified that he did not remember signing the Stock Power (A393), before backtracking and ultimately admitting that the two signatures were his (A462-63).

he had signed the ERAs "twice, on two different occasions." A379; *see also* A770-74; A827-28; A437.

When allegations and testimony that the signatures were fraudulent did not go well, Scaglia shifted-gears, arguing that he—despite being called a business "wizard" (A365)—simply did not pay attention to the ERAs or any of the numerous other documents referencing his and Haart's equal ownership of Freedom. Instead, he and his team handled the corporate documents concerning the ownership of a business enterprises valued in the hundreds of millions of dollars with the care of a Mickey Mouse operation, leading to "whoopsies" at each step. *E.g.*, A379 (testifying that he did not pick up on the "many" flaws and errors in the 2019 ERA); A437-38 (testifying that he did not even read the ERA, despite his assistant vouching for his signature (A770-74)). This is facially unbelievable and contradicted by contemporaneous written evidence showing Scaglia discussing the draft ERAs with his advisors. A826; A827; *see also* A769.

Scaglia was reduced to these inconsistent allegations and scattered testimony to avoid admitting the truth: that he connived with his affiliates and advisors against Haart. The evidence of Haart's equal ownership of Freedom was so overwhelming, Scaglia's attempts to explain it away was farcical. For example, when shown the minutes of Freedom's joint meeting of stockholders and directors on September 25, 2021 (A1053-55), which confirmed Haart's status as a director and 50% owner of

Freedom, Scaglia testified that in signing this two-page document, he would have only read the resolution at the bottom of the first page, and not the "technical stuff." A375; A445-46. The "technical stuff" is impossible to miss, as it was set off in shaded columns in the middle of the page, as the reprinted excerpt below shows (arrows and annotations added).

The Chairman directed the Secretary to call the roll of the Shareholders and Directors and the following Directors, constituting One Hundred Percent (100%) of the Shareholders and all of the Board of Directors, were present in person:

Shareholder Name	Address	Stock %	B/O/D
SILVIO SCAGLIA	70 Vestry Street, PHS, New York, NY 10013	50%	Yes
JULIA HAART	70 Vestry Street, PHS, New York, NY 10013	50%	Yes

Scaglia testified he didn't read this

The Chairman announced that the purpose of this meeting was the following:

FIRST AND ONLY ORDER OF BUSINESS is to consider the correction of the **e1972 Inc.**, stock issuance by directing the Corporation's wholly owned subsidiary to correct its books and records;

AS TO THE FIRST AND ONLY ORDER OF BUSINESS: The forgoing action being put to vote and unanimously approved, it is

Scaglia read this

RESOLVED: That the Corporation call a Joint Meeting of the Stockholders and Board of Directors of e1972Inc., and vote for that corporation to correct its stock issuance consistent with the original intent that all stock in **e1972 Inc.**, shall be issued to **Freedom**

A1052.

Scaglia's testimony attempting to explain his signature on the D&O questionnaire establishing the parties' 50/50 ownership is likewise nonsensical. A949-83. Scaglia testified that he only "reviewed very quickly" the questionnaire.

A392. Yet, Scaglia remembered enough about the document to attempt to argue that 50/50 merely meant that he and Haart shared the "economic value" of Freedom. A385. Scaglia however, contradictorily testified that, if EWG or Freedom were sold, the preferred shares would be entitled to the first $125 million, which obviously constitutes significant "economic value" (A371-72), and elsewhere admitted that "all classes of stock" means common and preferred (A437). Moreover, Scaglia answered "50%" to the question for "Voting Membership Interests." A958. Despite his attempts to plead ignorance as to the questionnaire, the evidence reflects that Scaglia "checked it and [was] fine with it." A947-48; A392.

Scaglia's post-hoc claim of ignorance does not justify rewriting the ERAs to suit him. "[W]hen a party to a written contract accepts it as a contract he is bound by the stipulations and conditions expressed in it whether he reads them or not. Ignorance through negligence or inexcusable trustfulness will not relieve a party from his contract obligations." *Toyota Motor Credit Corp. v. Figuereo*, 143 N.Y.S.3d 864 (N.Y. Civ. Ct. 2021) (TABLE) (citations omitted). The Trial Court wrongly infused its reading of the ERAs with Scaglia's incredulous reasoning, transforming the ERAs based on claims by a self-alleged "wizard" businessman that he made mistakes regarding the ERAs and Haart's ownership. Doing so was legal error. *See CDX Holdings, Inc. v. Fox*, 141 A.3d 1037, 1042 (Del. 2016); *Badr v. Hogan*, 554 N.E.2d 890, 891 (N.Y. 1990).

(ii) Haart's "Admissions" Do Not Contradict Her Claims And Are Not Credible Extrinsic Evidence.

All Scaglia had beyond his self-serving and conflicting testimony was a handful of text messages. The Trial Court wrongly elevated these non-contemporaneous text messages over both the plain language of the ERAs and all other extrinsic evidence (including the contemporaneous extrinsic evidence). *See, e.g.*, *Salamone v. Gorman*, 106 A.3d 354, 382 (Del. 2014) (reversing where "the Court of Chancery erroneously believed that certain extrinsic evidence cut against" agreement); *In re Shorenstein Hays-Nederlander Theatres*, 213 A.3d at 61-64 (the Court of Chancery erred in ignoring language of a contract term); *Eagle Indus.*, 702 A.2d at 1233 n.11 ("backward-looking evidence gathered after the time of contracting is not usually [as] helpful" as extrinsic evidence that reveals the parties' intent at the time of contracting); *Brainard*, 151 N.E. at 154 (New York court erred in looking to extrinsic evidence of the parties' intent because the agreement was unambiguous).

The texts the Trial Court credited were between Haart and Feinman or Cousin, an attorney for EWG. On January 15, 2021, in the midst of marital issues, Haart was first informed by Cousin that there was a one share inequity in the Stock Power. A1028-31. Haart immediately responded and requested that Feinman (the author) confirm in light of the contradicting advice from Cousin. A1023-27. The Opinion

notes that Feinman never texted back—though Haart testified that Feinman called her in response to these texts and told her that she "shouldn't worry, that [the discrepancy is] completely irrelevant, that it's equal in every way."[12] A362.

Scaglia contends the texts show that Haart did not believe she owned Freedom equally with Scaglia. Ex. B at 21. However, all the texts show is a business partner learning for the first time that at best a mistake was made and at worst she was lied to. The Opinion wrongly adopted Scaglia's argument, punitively concluding from the texts that "Haart knew no later than January 2021 that she held less than 50% of Freedom's preferred shares." *Id.*

The entire holding of the Trial Court is built upon this erroneous premise. Nothing in the text exchange suggests that Haart "knew" she did not own 50% of Freedom. To the contrary, Feinman, who drafted the 2019 ERA and whom Haart "trusted … with everything in [her] life," (A362) told her that ownership of Freedom was equal in every way. *Id.* Rather, all the text messages show is that in January 2021, Haart learned that although the Stock Power appeared to contradict the ERAs, the parties' agreements, Scaglia's countless representations, and the author assured her it did not.

[12] The Opinion never explains why Haart's testimony was not credible, while Scaglia's (who went so far as to falsely allege that his signature was forged) was.

The court below erred in making selected portions of Haart's texts trump the plain language of the ERAs. To the extent necessary to go beyond that plain language, it was also error to elevate those same selected portions of the texts over (1) the responsive texts *by the drafter of the agreement* telling Haart that her reading was wrong and the parties were co-equal owners, and (2) the numerous other statements by Scaglia and EWG confirming the equal ownership. This approach to construing the ERAs and erroneously considering extrinsic evidence constitutes reversible error. *See, e.g.*, *Salamone*, 106 A.3d at 382; *Eagle Indus., Inc.*, 702 A.2d at 1233 n.11.

3. The Stock Power Does Not Change This Result.

The Trial Court erroneously concluded that "[t]he only document in the record that purports to transfer any preferred stock is the Stock Power." Ex. B at 31. That is wrong for the reasons described above: the ERAs were not limited to common stock, but rather transferred "capital stock," which includes *both* common and preferred stock. This means *before* the Stock Power was executed, half of the preferred stock had already been transferred to Haart. The Stock Power thus could not achieve the duplicitous end Scaglia wanted (giving just less than 50% of preferred stock to Haart), because she already owned 50% of the shares.

To reiterate, the ERAs are flawed. That is Scaglia's fault: he and his team combined drafting sloppiness and deception to dupe Haart. This only confirms the

importance of adhering to the plain language of the ERAs. That Scaglia connived a final betrayal to try to renege on the ERAs through the Stock Power cannot undo the ERAs—executed both before and after the Stock Power. To give effect to the Stock Power for the limited purpose of undoing the ERAs as the Trial Court did would be to condone such behavior.[13]

[13] Although the Trial Court relied on the Stock Power in reaching its holding, it did not decide the issue of whether the Stock Power accomplished a legally effective transfer of preferred stock to Haart. Ex. B n.62.

II. THE COURT OF CHANCERY ERRED IN FAILING TO RECOGNIZE THAT THE ERAS CONSTRUCTIVELY DELIVERED 50% OF ALL FREEDOM STOCK TO HAART.

A. Question Presented

Did the Court of Chancery err in failing to address the fact that Scaglia constructively delivered equal ownership to Haart through the ERAs?

The issues were preserved for appeal in Haart's Pre-Trial Brief (A254-65) and Post-Trial Brief (A562-76).

B. Standard And Scope Of Review

The issue of whether there exists constructive delivery of corporate stock is appropriate for *de novo* review by this Court. *See Kallop v. McAllister*, 678 A.2d 526, 530 (Del. 1996).

C. Merits Of Argument

Even if the Trial Court were correct in its determination that the ERAs do not transfer 50% of Freedom stock to Haart as a matter of contract law, the court below erred by failing to apply the doctrine of constructive delivery.

The objective intent of the ERAs was to change the structure of Freedom, such that it was owned 50% by Scaglia and 50% by Haart. To comply with that obligation, Scaglia was required to transfer 50% of both the common and preferred stock to Haart. Thus, even if this Court determines that the ERAs were ineffective and an imperfect transfer, it should still find that the doctrine of constructive delivery validated the transfer of Freedom's ownership.

1. Delaware Law Applies To Constructive Delivery Under The ERAs.

Under Section 201 of the DGCL, "[s]tock transfers for Delaware corporations are governed by Article 8 of Delaware's version of the Uniform Commercial Code." *McAllister v. Kallop*, 1995 WL 462210, at *14 (Del. Ch. July 28, 1995), *aff'd*, 678 A.2d 526 (Del. 1996) (citing 8 *Del. C.* § 201). Therefore, Delaware law governs whether the ERAs, relating to Freedom and EWG, Delaware corporations, were sufficient to transfer ownership of 50% of stock to Haart, regardless of whether New York law applies to the contractual construction of the ERAs. *See id.*

2. The ERAs Constructively Delivered 50% Of Freedom's Preferred Shares To Haart.

In Delaware, the failure to record or otherwise perfect a transfer of stock does not affect the validity of a stock transfer between parties to the transaction. *See* 6 *Del. C.* § 8-304. Indeed, Delaware courts have routinely found constructive delivery appropriate to validate the transfer of stock despite an imperfect transfer. *See, e.g.*, *Kallop v. McAllister*, 678 A.2d 526, 527 (Del. 1996) (affirming trial court's determination that constructive delivery of one share was adequate to vest the title to the share of stock in the corporation, based on language of a letter agreeing to transfer one share back to company); *Danvir Corp. v. Wahl*, 1987 WL 16507, at *5 (Del. Ch. Sept. 8, 1987) (finding constructive delivery to an agent of the stockholder where, although a deceased party did not hand the relevant stock certificates to

Defendants, he did hand the stock books and the certificates to one of the Defendants); *Debbs v. Berman*, 1986 WL 1243, at *6 (Del. Ch. Jan. 29, 1986) (despite lack of a written contract granting plaintiff's 50% ownership as plaintiff claimed, plaintiff was entitled to a 50% equity interest).

Courts will find constructive delivery where two elements are met: (i) there is an unmistakable intention to transfer title without transferring possession to the transferee; and (ii) that the delivery "must proceed to a point of no return." *See McAllister*, 1995 WL 462210, at *16-17. Both elements are met here.

The ERAs intended to transfer 50% of Freedom to Haart. First, the 50% Ownership Clause of the ERAs establishes an explicit intention to transfer title: "***The Shareholders agree to transfer all of their Membership Interests*** in ELITE to their wholly [sic] Delaware corporation known as FREEDOM, and thus change the structure of ownership such that ***FREEDOM shall be owned 50% by each shareholder***." A660; A830 (emphasis added). That the Trial Court found that the 50% Ownership Clause is poorly worded and "has no practical effect" (Ex. B at 33-34) is meaningless under the doctrine of constructive delivery. Scaglia controlled the drafting and the corporate formalities. *See supra* at 7, 23, 26. Moreover, Scaglia represented to his wife, investors, potential buyers, as well as to federal authorities under the penalty of perjury, that Haart was an equal, 50% owner of Freedom. *See supra* at 10-15. The ERAs—through Scaglia's own words and actions—intended to

transfer 50% of *all* Freedom stock to Haart. The first element of constructive delivery was met, and Trial Court's finding to the contrary was erroneous.

The second element of the constructive delivery doctrine requires that a document, viewed in light of the circumstances, constitutes a "sort of delivery … to a point of no return." *McAllister*, 1995 WL 462210, at *17. A "point of no return" is broad, and is not limited to a paper stock certificate, or physical possession. *See, e.g.*, *In re Appraisal of Dell Inc*., 2015 WL 4313206, at *8 (Del. Ch. July 13, 2015), *as revised* (July 30, 2015) ("[A] paper stock certificate is not actually a share of stock. It is only evidence of ownership of a share of stock."); *Mau v. Mont. Pac. Oil Co.*, 141 A. 828, 831 (Del. Ch. 1928) ("Possession of a certificate is not essential to the ownership of stock.").

Here, the "point of no return" was reached through Scaglia's repeated representations to Haart, financial advisors, investors, and the federal government, that Haart owned 50% of Freedom. *See supra* at 10-15. Addressing a similar situation in *McAllister*, this Court found that constructive delivery of one share had occurred based on the language of a letter agreeing to transfer one share back to the company. The shareholder who had signed the letter agreement had a certificate for 100 shares, but he did not deliver it to the company. *McAllister*, 1995 WL 462210, at *14. Nevertheless, the *McAllister* Court held that constructive delivery occurred because his letter agreement proceeded to "a point of no return." *Id*. at *17; *Kallop*,

678 A.2d at 531-32. The same is true here—Scaglia's use of the ERAs as representation to third parties that Haart owned 50% of Freedom constitutes a point of no return. Any interpretation to the contrary would be inconsistent with Delaware law on transfer of shares, including this Court's equitable principles.[14]

[14] While Delaware law plainly applies to the doctrine of constructive delivery here, the analysis is the same under New York law. Conduct similar to Scaglia's has been found to constitute a transfer under New York law. *See Elyachar v. Gerel Corp*., 583 F. Supp. 907, 920 (S.D.N.Y. 1984) (finding that "delivery could not have been more complete" where party filed certificates and tax returns pursuant to the intended ownership).

III. THE COURT OF CHANCERY ERRED IN FAILING TO RECOGNIZE THAT SCAGLIA ACQUIESCED TO THE TRANSFER OF 50% OF FREEDOM STOCK TO HAART.

A. Question Presented

Did the Court of Chancery err by finding that, despite numerous private and public representations that Haart owned 50% of Freedom, Scaglia was not barred under the doctrine of acquiescence from arguing that Haart does not own 50% of Freedom?

The issues were preserved for appeal in Haart's Pre-Trial Brief (A274-81) and Post-Trial Brief (A583-88).

B. Standard And Scope Of Review

This Court reviews questions of law *de novo*. This Court will not overturn the Court of Chancery's factual findings unless they are clearly erroneous. A trial court's application of equitable arguments presents a mixed question of law and fact. *Klaassen v. Allegro Dev. Corp*., 106 A.3d 1035, 1043 (Del. 2014).

C. Merits Of Argument

Acquiescence may be found to bar a party[15] from arguing a position contrary to prior conduct where a party "has full knowledge of his rights and the material

[15] The doctrine of acquiescence may be applied affirmatively to bar a defendant or counterclaimant's argument. *See Simple Glob., Inc. v. Banasik*, 2021 WL 2587894, at *13 (Del. Ch. June 24, 2021), *judgment entered*, (Del. Ch. 2021) (finding that defendant/counterclaimant's arguments were barred by the doctrine of acquiescence).

facts" and, with such knowledge, "(1) remains inactive for a considerable time; or (2) freely does what amounts to recognition of the complained of act; or (3) acts in a manner inconsistent with the subsequent repudiation." *Klaassen v. Allegro Dev. Corp.*, 106 A.3d 1035, 1047 (Del. 2014) (citations omitted). A claim will be barred where the party has engaged in conduct that "acknowledged the legitimacy" of the transaction. *Clements v. Rogers*, 790 A.2d 1222, 1238 n.46 (Del. Ch. 2001). For acquiescence to apply, conscious intent to approve the act is not required, (*Frank v. Wilson & Co.*, 9 A.2d 82, 87 (Del. Ch. 1939), *aff'd*, 32 A.2d 277 (Del. 1943)), nor is a change of position or resulting prejudice. *Nevins v. Bryan,* 885 A.2d 233, 254 (Del. Ch. 2005), *aff'd*, 884 A.2d 512 (Del. 2005) (TABLE).

The Trial Court did not properly analyze the doctrine, nor did it correctly apply it to the record. The Opinion found that Scaglia told "potential investors, other third parties, and tax authorities that [Haart and Scaglia] owned Freedom equally." Ex. B at 1. Moreover, the Opinion found that, through various representations, including "the documents designed to support a SPAC transaction," that "the parties continued to execute documents in the ordinary course of business suggesting Scaglia and Haart equally shared Freedom's stock." *Id.* at 18). Scaglia saw, and in some instances signed, many of these documents, and "failed to either notice or correct the [allegedly] inaccurate statements about Haart's share." *Id.* The Trial

Court nonetheless held that this clear acquiescence did not bar Scaglia from arguing that Haart owns 50% of Freedom.

The Trial Court reasoned "there was nothing … to which Scaglia could acquiesce" because it found no documents purporting to evenly split Freedom's shares. Ex. B at 42. In doing so, the Opinion contradicts itself. The Opinion examines *how and why* Scaglia held Haart out as a 50% partner (Ex. B at 40-41), yet flatly rejects any equitable relief to Haart despite Scaglia's conduct. *Id.* at 42. For years Scaglia executed documents in the ordinary course of business representing he and Haart equally owned Freedom's stock. *Supra* at 10-15. Any assertion that Scaglia did not read these plethora representations, or was otherwise unaware of the fact that he was holding out Haart to be an equal owner, is not credible. *Supra* at 29-32.

Moreover, Scaglia's actions amount to a recognition of Haart's 50% ownership. *See Simple Glob., Inc.*, 2021 WL 2587894, at *13 (finding that defendant/counterclaimant acquiesced to the Company's recognition of his transfer of 3,304,509 of his shares and the resulting reduction of his ownership, because "[h]e did not raise any challenge to the stock transfer until asserting his counterclaim in this action," "he freely recognized the act about which he now complains," and "[h]is prior conduct led the Company to believe that he had approved and was in full agreement with the share transfer"); *see also supra* at 10-15. There is no evidence

in the record that Scaglia ever attempted to correct any of these statements until he purported to issue the Written Consent. All of the elements of acquiescence under Delaware law are met. The Trial Court's determination should be reversed.

CONCLUSION

For the foregoing reasons, Haart respectfully requests that this Court (i) reverse the Court of Chancery's decision that Haart did not own 50% of all classes of Freedom stock, and (ii) reverse the Court of Chancery's decision Haart was validly terminated from her positions at Freedom and EWG.

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Dated: November 1, 2022

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CERTIFICATE OF SERVICE

I hereby certify that on November 1, 2022, a copy of **APPELLANT'S OPENING BRIEF** was served via File & Serve*Xpress* upon the following counsel of record:

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