EFiled: Mar 03 2023 12:06PM EST
Filing ID 69257764
Case Number 15,2023

IN THE SUPREME COURT OF THE STATE OF DELAWARE

STRAINE DENTAL MANAGEMENT, LLC, STRAINE DM HOLDINGS, LLC and STRAINE DM INTER HOLDINGS, LLC, Defendants Below-Appellants, v. ROBERT BREAULT, D.M.D., Plaintiff Below-Appellee.	No. 15, 2023 Case Below: Court of Chancery of C.A. No. 2022-0410-JTL

APPELLANTS' OPENING BRIEF

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Dated: March 3, 2023

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NATURE OF PROCEEDINGS

While ostensibly a books and records action, there is much more at stake here. Appellant Straine Dental Management, LLC ("Straine Dental Management" or the "Company") provides various administrative services to dental practices. Appellee, Robert Breault, D.M.D., became a member of the Company when his dental practice, Cromwell Family Dental, P.C. ("Cromwell Family Dental"), entered into a Service Agreement with the Company and became a client.

When Dr. Breault made a demand for the Company's books and records, the Company rejected the demand because Dr. Breault was no longer a member. Dr. Breault had previously notified the Company that he was terminating the Service Agreement between his dental practice and the Company, and, pursuant to the Company Limited Liability Company Agreement (the "LLC Agreement"), the Company had exercised its contractual right to repurchase his Membership Units.[1]

After a one-day bench trial, the Court of Chancery agreed with Dr. Breault that the Company's exercise of what the court referred to as the Company's "Call Right" was untimely. As relevant to this appeal, the Court of Chancery found that the parties had terminated the Service Agreement on February 15, 2022 in

[1] The remaining appellants are Straine DM Holdings, LLC and Straine DM Inter Holdings, LLC. Although named in Dr. Breault's complaint, they are separate entities, and Dr. Breault has never claimed an ownership interest in either of them.

accordance with the Service Agreement's provision for termination by "mutual written agreement." The Court of Chancery based its conclusion on an exchange of emails on February 14 and 15, 2022 between Dr. Breault and the Company's President and CEO, Kerry Straine that, according to the Court of Chancery, gave rise to a "mutual written agreement" to terminate the Service Agreement as of February 15, 2022. Then, based on its finding of a "mutual written agreement" effective as of February 15, 2022, the Court of Chancery concluded that the Company's April 8, 2022 notice to Dr. Breault that it was electing to purchase his Membership Units was untimely because the 15-day deadline to provide notice under the LLC Agreement lapsed on March 2, 2022. Accordingly, the Court of Chancery held that Dr. Breault remained a member of the Company and was entitled to the books and records he had requested.

But, as explained below, the Court of Chancery clearly erred in finding a "mutual written agreement" to terminate the Service Agreement because there was never a meeting of the minds on the conditions for termination. Delaware, which has adopted the mirror-image rule, requires that acceptance be identical to the offer. Yet Dr. Breault's February 14, 2022 email to Mr. Straine did not even mention termination of the Service Agreement, stating only that Dr. Breault did not want to proceed with a planned corporate transaction and understood the need for "things" to "get unwound." Mr. Straine responded on February 15, 2022, by stating that he

"accepted" Dr. Breault's decision and that the Company would send him a Membership Unit Redemption and Mutual Release Agreement ("Redemption Agreement"). Among other things, that proposed agreement included a specific provision addressing termination of the Service Agreement. Dr. Breault, however, never signed the Redemption Agreement, as Mr. Straine expected he would.

Consequently, the Service Agreement did not *mutually* terminate on February 15 because termination of the Service Agreement was conditioned on the occurrence of a subsequent event (execution of the Redemption Agreement). Rather, termination did not occur until April 2022. That was when the Company sent a letter to Dr. Breault responding to a March 16, 2022 email in which Dr. Breault referenced—incorrectly in the Company's view—the Service Agreement as having terminated on February 15 and requested transfer of his practice's financial information to his new bookkeeper.

In accordance with both the Service Agreement and the LLC Agreement, the Company informed Dr. Breault that it was treating his March 16 email as a notice of termination under the Service Agreement's termination provision, that it was waiving what remained of the 90-day notice period, and that it was exercising its right under the LLC Agreement to purchase his Membership Units. The Company then paid Dr. Breault the amounts to which he was entitled under the LLC Agreement. It is undisputed that Dr. Breault received the Company's letter no later

than April 20, 2022, which was well within the LLC Agreement's 15-day period for providing notice of the Company's exercise of its Call Right.

Accordingly, contrary to the Court of Chancery's analysis, Dr. Breault is no longer a member of the Company, and the Court of Chancery erred in determining otherwise. The Court of Chancery's decision should therefore be reversed and judgment entered in favor of the Company.

SUMMARY OF ARGUMENT

1. A "mutual written agreement" to terminate a contract requires a meeting of the minds, including with respect to any conditions for termination. Because there was no meeting of the minds regarding the conditions for the termination of the Service Agreement, the email correspondence between Dr. Breault and Mr. Straine on February 14 and 15, 2022 did not result in a "mutual written agreement" to terminate the Service Agreement. The Court of Chancery clearly erred in finding otherwise.

2. The Company timely exercised its Call Right when it responded to Dr. Breault's March 16, 2022 email referencing, for the first time, the Service Agreement's "terminat[ion]." In its April 8, 2022 letter to Dr. Breault, the Company notified him that it was treating the March 16, 2022 email as a notice of termination under the Service Agreement, that it was waiving the agreement's 90-day notice period, and that it was electing to purchase his Membership Units in accordance with the Company's LLC Agreement. The Company's notice was timely, and the Company fully complied with the requirements of the Service Agreement and the LLC Agreement for both termination of the Service Agreement and the purchase of Dr. Breault's Membership Units. The Court of Chancery therefore erred in concluding that Dr. Breault is still a member of the Company.

STATEMENT OF FACTS

A. The Parties

Straine Dental Management is a Delaware limited liability company that provides services related to the management and growth of dental practices. Exhibit A, Post-Trial Findings of Fact and Conclusions of Law ("Op.") ¶¶ 1, 3. At all relevant times, the Company's affairs and relationship with its members ("Members") were governed by the LLC Agreement. *Id.* at ¶ 1.

Dr. Breault is a practicing dentist and the president of his dental practice, Cromwell Family Dental. Op. ¶ 4. Dr. Breault acquired a member interest in the Company; in return for a total capital contribution of $22,500, Dr. Breault received two Class B Membership Units and 0.25 Class D Membership Units. *Id.* at ¶ 6.

B. The LLC Agreement

Under the LLC Agreement, the Members of the Company were those who held Membership Units in at least one of the Company's Membership Classes A through D. A219, § 1.7, A224-25, § 2.1. Membership in Membership Classes B and D was conditioned upon the Member's dental practice being a "Client" of Straine Dental Management. A224-24, § 2.1(b)(2), (4). A "Client" is defined as:

> [A] Dental Practice which has entered into a Service Agreement with the Company or its Affiliate.

A221, § 1.8.

A "Service Agreement" is defined as:

> a service agreement entered into by the Company and a Client, under which agreement the Company will provide services related to dental practice growth management and dental practice sale strategies.

A223, § 1.8.

The LLC Agreement authorized the Company to purchase a Member's Membership Units upon the occurrence of any of certain enumerated "Triggering Events." A244, § 7.3. Specifically, Section 7.3 provides in pertinent part:

> (a) In the event . . . (iv) a Class B, Class C or Class D Member's Dental Practice ceases to be a Client of the Company (collectively, the "Triggering Events"), the Company shall immediately have the right at its option to purchase all of such Member's Membership Units . . . .
>
> * * *
>
> (c) The Company shall exercise its right to purchase such Member's Membership Units by providing written notice (the "Notice") to such Member within fifteen (15) days of discovering the Triggering Event (the "Notice Date").

Id. And under Section 7.4(a)(2), "[t]he purchase price for any Membership Units purchased under §7.3 will be: . . . in the cases of the Triggering Events set forth in . . . § 7.3(a)(iv), One Dollar ($1.00) per 0.25 Membership Units." A244-45, § 7.4(a).

Reading the LLC Agreement provisions together, Straine Dental Management was vested with the right to purchase all of a Member's Class B and D Membership Units (at a price of $1.00 per .25 Membership Units) in the event that the Member's dental practice ceased to be a Client of the Company (*i.e.*, ceased to be party to a

service agreement with Straine Dental Management); and, immediately upon the Company's exercise of that right (the "Call Right"), the Member would cease to be a Member of the Company. A219, § 1.7; A221-22, § 1.8; A224-25, § 2.1; A244, § 7.3; A244-46, § 7.4.

C. The Applicable Service Agreement

In accordance with Section 1.8 of the LLC Agreement, Straine Dental Management and Dr. Breault's dental practice (Cromwell Family Dental) were parties to a January 1, 2018 Service Agreement (the "Service Agreement"). Op. ¶ 5. Section 7.2 of the Service Agreement provided that: "This Agreement may be terminated at any time by the mutual written agreement of the Parties or upon at least 90 days written notice by either Party to the other." A270, § 7.2(a).

D. The February 14–15, 2022 emails and the Redemption Agreement

Straine Dental Management and Dr. Breault subsequently entered into a letter of intent regarding a potential transaction (the "Potential Transaction") under which the Company would acquire the non-clinical assets of certain dental practices, including Cromwell Family Dental. Op. ¶ 7.

But Dr. Breault subsequently determined not to proceed with the Potential Transaction. Specifically, on February 14, 2022, he wrote a lengthy email in which he listed his objections and confirmed his decision not to participate. A301-02. In the penultimate paragraph of his email, Dr. Breault expressed his expectation for the

parties' relationship moving forward and wrote: "I understand that things will need to get unwound and I will cooperate fully." A302. Dr. Breault's email made no reference to the Service Agreement or its termination. *Id.* And, importantly, Dr. Breault made no offer to terminate the Service Agreement.

On February 15, 2022, Kerry Straine (the Company's CEO and President) responded to Dr. Breault's email. A301. In his response email, Mr. Straine stated that he "accept[ed] [Dr. Breault's] decision" not to participate in the Potential Transaction. *Id.* Additionally, Mr. Straine's email advised that the Company would proffer to Dr. Breault a proposed "mutual release agreement" by which the parties would terminate the Service Agreement and the Company would repurchase Dr. Breault's Membership Units. *Id.* Specifically, Mr. Straine's email provided: "Upon execution of the mutual release agreement [Straine Dental Management] will pay you the total redemption price of $22,500.00 in addition to $4,950.00 for your prepaid final month of services." *Id.* In short, the termination of the relationship was conditioned on the execution of the "mutual release agreement."

Thereafter, Vera Powell (on behalf of the Company) emailed to Dr. Breault the proposed Membership Unit Redemption and Mutual Release Agreement (the "Redemption Agreement"). A301. Consistent with the parties' intent to terminate the Service Agreement at some future date, Section 1.3 of the Redemption Agreement provided: "Effective as of the Effective Date [defined as February 28,

2022], the [parties] hereby agree that the Service Agreement . . . shall, subject to Section 7.3 of the Service Agreement, automatically be terminated . . . ." A304.

Dr. Breault, however, never executed the Redemption Agreement. A151-52/63:7–64:14 (Breault). In a March 17, 2022 letter to the Company's counsel, Dr. Breault's counsel represented that "Dr. Breault [was] willing to execute the [Redemption Agreement] if" an enumerated list of "issues [were] addressed." A311. Dr. Breault's counsel did not identify, as one such "issue," any perception that the Service Agreement had already been terminated (thereby obviating Section 1.3 of the draft agreement). *See* A311-12. Rather, Dr. Breault refused to sign the Redemption Agreement because he "felt at the time that [his] membership units were worth a lot more than what [the Company] [was] offering." A129/41:2–6 (Breault).

E. Termination of the Service Agreement and exercise of the Company's Call Right

Despite having never executed the Redemption Agreement (nor any other mutual written agreement purporting to terminate the Service Agreement), Dr. Breault stated in a March 16, 2022 email that the "services agreement [was] terminated." A309. As of that time, however, the Company was still providing services to Cromwell Family Dental. *See* A155-56/67:19–68:9 (Breault). And prior to that email, Dr. Breault had never conveyed to the Company that he perceived the Service Agreement to be terminated. A154-55/66:15–67:14 (Breault).

Nevertheless, in view of Dr. Breault's March 16, 2022 email, Straine Dental Management sent to Dr. Breault an April 8, 2022 notice (the "Notice") acknowledging that the Service Agreement was to be terminated. A317-18.[2] In particular, the Notice cited Dr. Breault's March 16, 2022 email as constituting his 90-day notice to terminate under Section 7.2 and also expressly waived what remained of the 90-day period—thereby effectuating termination of the Service Agreement as of the effective date of the Notice. *Id.*

The Notice additionally notified Dr. Breault that, in light of the Service Agreement's termination, the Company was exercising its Call Right (*i.e.*, its right under Section 7.3 of the LLC Agreement to purchase all of Dr. Breault's Membership Units). A317-18. Specifically, the Notice identified, as a "Triggering Event" under Section 7.3(a), Cromwell Family Dental's cessation as a Client of the Company. *Id.* And, based on that Triggering Event, the Company thereupon invoked its "option to purchase all of [Dr. Breault's] Membership Units" at the contractual purchase price of "One Dollar ($1.00) per 0.25 Membership Units." *Id.* Accordingly, in compliance with Section 7.4(a)(2) of the LLC Agreement, the Company enclosed a check in the amount of $9.00 (*i.e.*, the full payment amount for

[2] By no later than April 20, 2022, Dr. Breault received the Notice via at least two methods: (1) the Notice was personally delivered to Dr. Breault by one of his residential neighbors, and (2) the Notice was delivered via FedEx to Dr. Breault at his office. A164/76:7–77:16 (Breault).

the 2 Class B Membership Units and 0.25 Class D Membership Units then held by Dr. Breault). A318. Dr. Breault thereupon ceased to be a Member of the Company. *See* A219, § 1.7; A224-25, § 2.1.

F. Dr. Breault Demands Books and Records

By letter dated April 1, 2022 (the "Demand"), Dr. Breault demanded inspection of certain of the Company's books and records pursuant to 6 *Del. C.* § 18-305. A313-15.

By letter dated April 13, 2022, Straine Dental Management rejected Dr. Breault's Demand on the basis that Dr. Breault "[was] no longer a member of [the Company], pursuant to the [Notice]" and the Company's exercise of the Call Right. A319.

By letter dated April 14, 2022, Dr. Breault disputed the Company's exercise of the Call Right and asserted that Dr. Breault was still a Member of Straine Dental Management vested with a right of inspection. A368.

G. Dr. Breault Initiates Litigation

On May 10, 2022, Dr. Breault filed a "Verified Complaint Under 6 *Del. C.* § 18-305," naming as defendants Straine Dental Management, Straine DM Holdings, LLC, and Straine DM Inter Holdings, LLC. A17. In his Complaint, Dr. Breault requested a declaration that he was entitled to inspect the documents and materials described in his Demand. A25. In their respective briefing and at trial, the

parties focused on whether Straine Dental Management had validly exercised its Call Right under Section 7.3 of the LLC Agreement, such that Dr. Breault had ceased to be a Member of the Company prior to his filing the inspection action. *See* Op. ¶¶ 25–26.

H. The Court of Chancery's decision

Following a one-day bench trial, the Court of Chancery held that Straine Dental Management did not timely exercise the Call Right, and that Dr. Breault therefore remained a Member entitled to the Company's books and records sought by his inspection action. *See* Op. ¶¶ 34–35, 37.

The Court of Chancery found that the parties terminated the Service Agreement on February 15, 2022, by "mutual written agreement" in the form of the exchange of emails between Dr. Breault and Mr. Straine, and that this exchange constituted a "Triggering Event" under Section 7.3 of the LLC Agreement. *See* Op. ¶¶ 29–31, 36. The Court of Chancery further opined that the Company discovered this "Triggering Event" on February 15, 2022, such that the Company's 15-day period in which to exercise the Call Right expired on March 2, 2022. *See id.* at ¶¶ 29–32. Accordingly, the Court of Chancery concluded the Company's attempt to exercise the Call Right on April 8, 2022 was ineffective and Dr. Breault remained a Member of the Company. *See id.* at ¶¶ 33–35, 37. On that basis, the Court of Chancery ordered the Company to produce the documents sought in Dr. Breault's

Demand. *Id.* at ¶ 40. The Company timely complied and produced the demanded books and records. *See* Exhibit B, Court of Chancery's Final Order dated December 19, 2022.

Straine Dental Management, Straine DM Holdings, LLC, and Straine DM Inter Holdings, LLC timely filed a Notice of Appeal with this Court.

ARGUMENT

I. THERE WAS NO "MUTUAL WRITTEN AGREEMENT" TO TERMINATE THE PARTIES' SERVICE AGREEMENT

A. Question Presented

Did the Court of Chancery clearly err in finding a "mutual written agreement" to terminate the parties' Service Agreement? This question was raised below (A53, A195) and considered by the Court of Chancery (Op. ¶¶ 9–16, 31, 36).

B. Scope of Review

Mutual assent is a question of fact. *Eagle Force Hldgs., LLC v. Campbell*, 235 A.3d 727, 735 (Del. 2020). *See also Anchor Motor Freight v. Ciabattoni*, 716 A.2d 154, 156 (Del. 1998) ("[I]ntent of the parties is generally a question of fact . . . .").

A trial court's factual findings will be upheld "as long as they are not clearly erroneous." *SIGA Techs., Inc. v. PharmAthene, Inc*., 67 A.3d 330, 341 (Del. 2013). A court clearly errs when it draws "inferences and conclusions based on a mistake of law." *David v. Steller*, 269 A.2d 203, 205 (Del. 1970).

C. Merits of Argument

Section 7.2 of the Service Agreement provides, in relevant part, that it may be terminated at any time "by the mutual written agreement of the Parties." A269, § 7.2(a). Despite the Court of Chancery's finding, the February 14–15, 2022 emails between Dr. Breault and Mr. Straine did not give rise to a "mutual" agreement to

terminate the Service Agreement. Op. ¶¶ 11–15, 31, 36.b. Rather, at best, Mr. Straine's assent was conditioned on the occurrence of a subsequent condition—Dr. Breault's execution of the proposed Redemption Agreement—which never happened. Accordingly, there was no "mutual" agreement to terminate the Service Agreement as of February 15, 2022, and the Court of Chancery's conclusion otherwise should be reversed.

1. Mutual assent is required for contract termination

This Court has long held that "[t]o effect a rescission by subsequent mutual agreement, it is necessary that the agreement should receive the free and understanding consent of both parties to the original contract." *Josloff v. Falbourn*, 125 A. 349, 350 (Del. 1924). This requires "a meeting of the minds of the parties in respect to the proposition that it shall be cancelled, and also in respect to any terms or conditions upon which the rescission is to be predicated." *Id*.

Accordingly, "[t]here can be no cancellation of a contract unless it is clearly shown that such was the intention of both parties." *Id*. *See also Foss-Hughes Co. v. Norman*, 119 A. 854, 855 (Del. Super. Ct. 1923) ("It is elementary that where mutual assent is invoked as the ground for rescission of a contract that all the parties must consent and there must be a meeting of their minds thereto."); 29 WILLISTON ON CONTRACTS § 73:15 (4th ed.) ("[T]he validity of an agreement to rescind a contract is controlled by the same rules as in the case of other contracts; there must exist an

offer by one party and an unconditional acceptance of that precise offer by the other, prior to withdrawal by the offeror, before a binding agreement is born."); *Ramone v. Lang*, 2006 WL 4762877, at *10 (Del. Ch. Apr. 3, 2006) (noting that "Delaware, which has adopted the mirror-image rule, requires that acceptance be identical to the offer"); *Bryant v. Way*, 2012 WL 1415529, at *10 (Del. Super. Ct. Apr. 17, 2012) ("Where one of the contracting parties states that he will not be bound until an event such as the signing of a memorandum that might not otherwise be required occurs, he will not be bound before that condition is satisfied.") (citation omitted).

2. Mr. Straine proposed a condition for the Service Agreement's termination that Dr. Breault never accepted, so there was no mutual assent

The Court of Chancery failed to heed these principles, and instead clearly erred in finding that there was a "mutual written agreement" to terminate the Service Agreement. In his February 14, 2022 email, Dr. Breault informed Mr. Straine that he had decided not to participate in the Potential Transaction by which the Company would acquire the non-clinical assets of certain dental practices, including Dr. Breault's Cromwell Family Dental. A302. Dr. Breault acknowledged "that things will need to get unwound" and that he would "cooperate fully," but made no mention of the Service Agreement or its termination. *Id*.

Mr. Straine responded the next day, February 15, stating that he "accept[ed]" Dr. Breault's "decision," that Straine Dental Management's Vera Powell would

email Dr. Breault "the mutual release agreement," and that "[u]pon execution of the mutual release agreement" the Company would pay Dr. Breault the total redemption price of $22,500 for his Membership Units, plus "$4,950.00 for your prepaid final month of services." A301. Taken together, Mr. Straine's comments—which do not even mention the Service Agreement—demonstrate his belief at the time that a subsequent condition must occur before the parties' relationship could be "unwound"—namely, the execution of "the mutual release agreement." Accordingly, there was no mutual assent because Mr. Straine expressly contemplated the occurrence of a subsequent event. *See, e.g.*, *Bryant*, 2012 WL 1415529, at *10 ("Where one of the contracting parties states that he will not be bound until an event such as the signing of a memorandum that might not otherwise be required occurs, he will not be bound before that condition is satisfied.") (citation omitted).

The proposed Redemption Agreement, which Ms. Powell emailed to Dr. Breault later in the day on February 15, confirms that the occurrence of an additional condition was contemplated before termination of the Service Agreement. Specifically, the Redemption Agreement included a provision, Section 1.3, for "automatic[]" termination of both the "Service Agreement" and all "Other Agreements" between the parties on the Redemption Agreement's "Effective Date." A304, § 1.3. Notably, the "Effective Date" in the proposed Redemption Agreement

was *not* February 15, 2022, but was February 28, 2022 thus confirming that an additional condition needed to be satisfied prior to the termination of the Service Agreement. A303. Indeed, had the Redemption Agreement been executed, it would have, in Dr. Breault's words, "unwound" the parties' relationship, including termination of the Service Agreement. This was the first time that the Service Agreement's termination was raised.

Dr. Breault, however, never signed the Redemption Agreement. Accordingly, there was no "mutual" agreement to terminate the Service Agreement because the parties never had a meeting of the minds on the "terms or conditions upon which the [termination was] to be predicated." *Josloff*, 125 A. at 350. Again, neither Dr. Breault's February 14 email nor Mr. Straine's response on February 15 even mentioned the Service Agreement, let alone addressed its termination.

Not only that, Mr. Straine's request that Dr. Breault sign and return the Redemption Agreement shows that execution of the Redemption Agreement was, at least in Mr. Straine's mind, a condition for things to be "unwound." It is well established that "'[a] reply to an offer, although purporting to accept it, which adds qualifications or requires performance of conditions, is not an acceptance but is a counter-offer.'" *Friel v. Jones*, 206 A.2d 232, 234 (Del. Ch. 1964), *aff'd*, 212 A.2d 609 (Del. 1965) (citation omitted). "In order to constitute an 'acceptance,' a response to an offer must be on identical terms as the offer and must be

unconditional." *PAMI-LEMB I Inc. v. EMB-NHC, L.L.C.*, 857 A.2d 998, 1015 (Del. Ch. 2004); *see also* WILLISTON ON CONTRACTS § 73:15 ("Mutual rescission of a contract occurs only where the acts of one party are fully acquiesced in or agreed to by the other.").

Here, Mr. Straine's response to Dr. Breault's email was not an "unconditional" agreement for the Service Agreement's termination. Mr. Straine instead added a "condition" or "qualification": Dr. Breault's execution of the Redemption Agreement. But Dr. Breault never signed that agreement. While the Court of Chancery did not view the Redemption Agreement's execution as a condition for termination of the Service Agreement because the Redemption Agreement "covered a wider array of relationships between [Dr.] Breault and the Company," (Op. ¶ 36.d.), that conclusion does not follow. It is true that the Redemption Agreement "also covered the redemption of the Disputed Units and included a mutual release of claims." *Id*. But that does not alter the fact that the Redemption Agreement was, in its entirety, intended to accomplish a termination of the parties' entire relationship, including the Service Agreement. Dr. Breault, however, never signed it, and thus there was no mutual assent to termination. Indeed, it would have made no sense to include a provision terminating the Service Agreement if, in fact, it had already been terminated.

For these reasons, the Court of Chancery clearly erred in finding that the email correspondence between Dr. Breault and Mr. Straine, standing alone, gave rise to a "mutual written agreement" to terminate the Service Agreement.

3. The evidence the Court of Chancery cited does not show mutual assent

In addition to the February 14–15, 2022 emails, the Court of Chancery cited several pieces of "evidence" that it saw as demonstrating "that the Services Agreement had terminated by mutual agreement on February 15." Op. ¶¶ 11–15. None of that evidence supports such a finding.

The Court of Chancery first relied on a recital in the Redemption Agreement stating that the parties "have mutually agreed to terminate the Services Agreement." Op. ¶ 13.a.; A303. The court found this recital to have been "framed in the past tense, reflecting that the Services Agreement already had been terminated." Op. ¶ 13.a. That, however, is not a reasonable interpretation. The recital merely recognizes the Redemption Agreement as the planned embodiment of the parties' mutual agreement to terminate the Service Agreement, *had it been executed*. The recital was not intended to reflect that the Service Agreement had *already* been terminated. If that were the case, there would have been no need to provide for the Service Agreement's *actual* termination later in Section 1.3. The meaning that the court ascribed to the recital, aside from being unfounded, would render Section 1.3 meaningless. *See Osborn ex rel. Osborn v. Kemp*, 991 A.2d 1153, 1159 (Del. 2010)

("We will not read a contract to render a provision or term 'meaningless or illusory.'") (citation omitted).

The Court of Chancery further erred in relying on Mr. Straine's reference in his February 14 email to Dr. Breault receiving a refund of "$4,950.00 for your prepaid final month of services." A3017; Op. ¶ 11. The court reasoned that "Straine's identification of the refund amount only makes sense if Straine understood that the Services Agreement was terminated by mutual agreement as of February 15, 2022." Op. ¶ 11. But the court's reliance on Mr. Straine's statement is flawed because Mr. Straine's reference to a refund for prepaid services necessarily assumed immediate execution of the Redemption Agreement, which again never occurred.[3]

Finally, the Court of Chancery cited the fact that "Breault lost access to [Cromwell Family Dental's] analytics dashboard within a week after Straine's email on February 15, 2022," and that "[d]uring the second half of February 2022, Dr. Breault reached out to vendors to replace the services that the Company had been providing." Op. ¶¶ 14–15. Despite the court's suggestion, these occurrences are not evidence of a mutual agreement to terminate the Service Agreement as of February

[3] The court later stated that the Redemption Agreement itself provided for a "refund of prepaid services," (Op. ¶ 13.b), but the Redemption Agreement contains no such provision.

15. Moreover, the court disregarded the fact that at least some of the services provided to Cromwell Family Dental under the Service Agreement continued into March 2022. *See* A156/68:1–9 (Breault).

At most, the parties' conduct throughout the end of February 2022 reflects their expectation that the Service Agreement would be coming to an end *at some point*. But there was no meeting of the minds on when that would happen, or what the conditions for termination would be. To the extent Dr. Breault's access to the analytics dashboard was cut off shortly after Mr. Straine's February 15 email, that is consistent with Mr. Straine's assumption that Dr. Breault would be signing the Redemption Agreement, thereby terminating the Service Agreement. But once again, the Redemption Agreement was never executed, so there was no "mutual written agreement" to terminate the Service Agreement as required by Section 7.2 as of February 15, 2022. The Court of Chancery clearly erred in finding otherwise.

II. DR. BREAULT IS NO LONGER A MEMBER OF THE COMPANY BECAUSE THE COMPANY TIMELY EXERCISED ITS RIGHT TO PURCHASE HIS MEMBERSHIP UNITS

A. Question Presented

Did the Court of Chancery err as a matter of law in concluding that the Company did not timely exercise its right to purchase Dr. Breault's Membership Units, when that legal conclusion rested solely on the court's clearly erroneous finding that there was a "mutual written agreement" to terminate the Service Agreement as of February 15, 2022? This question was raised below (A54, A81) and considered by the Court of Chancery (Op. ¶¶ 28–37).

B. Scope of Review

This Court reviews *de novo* the Court of Chancery's legal conclusions in interpreting the LLC Agreement. *Alta Berkeley VI C.V. v. Omneon, Inc.*, 41 A.3d 381, 385 (Del. 2012). The Court applies ordinary principles of contract interpretation, giving effect to the agreement's "clear and unambiguous" terms. *In re Shorenstein Hays-Nederlander Theatres LLC Appeals*, 213 A.3d 39, 56 (Del. 2019) (citation omitted).

C. Merits of Argument

Because the Court of Chancery clearly erred in finding a "mutual written agreement" to terminate the Service Agreement as of February 15, 2022, it likewise erred, as a matter of law, in concluding that the Company did not timely exercise its right to purchase Dr. Breault's Membership Units. Op. ¶ 34.

To begin, the court did properly identify the controlling provisions of the Company's LLC Agreement. As discussed previously, there are various events, called "Triggering Events," that can give rise to the Company's right to purchase a Member's "Membership Units." One of those events is when a "Class B, Class C or Class D Member's Dental Practice ceases to be a Client of the Company." A244, § 7.3(a)(iv). When that occurs, "the Company shall immediately have the right at its option to purchase all of such Member's Membership Units." *Id*. The Company must exercise what the Court of Chancery again referred to as its "Call Right" "within fifteen (15) days of discovering the Triggering Event" by providing notice that specifies a "date for the closing of the purchase" that is "not to be more than ninety (90) days after the Triggering Event." A244, § 7.3(c).

The Company did that here. By letter dated April 8, 2022, the Company notified Dr. Breault that it was treating his March 16, 2022 email as written notice of termination under Section 7.2 of the Service Agreement. A317-18.[4] The letter, which Dr. Breault acknowledged he received by April 20, further stated that the Company was waiving what remained of the 90-day notice period, thus terminating

[4] As mentioned previously, Section 7.2 provided: "This Agreement may be terminated at any time by the mutual written agreement of the Parties or upon at least 90 days written notice by either Party to the other." A270, § 7.2(a).

the Service Agreement and giving rise to a "Triggering Event."[5] A318. Finally, the letter notified Dr. Breault that the Company was electing to purchase his Membership Units at the price specified in Section 7.4(a) of the LLC Agreement and enclosed a check in that amount. A317-18.[6] The letter therefore fully complied with the LLC Agreement's provisions governing the Company's rights to repurchase Membership Units.

In concluding that the Company's exercise of its Call Right was untimely, the Court of Chancery relied entirely on its finding that there was a "mutual written agreement" to terminate the Service Agreement as of February 15, 2022, such that the 15-day period for the Company to exercise its Call Right had already expired by the time it notified Dr. Breault in April 2022 that it was electing to purchase his Membership Units. Op. ¶¶ 31–33.

As discussed, that finding is clearly erroneous. There was no "mutual written agreement" to terminate the Service Agreement as of February 15, 2022, because the exchange of emails between Mr. Straine and Dr. Breault did not reflect a meeting

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[5] *See* A164/76:7–77:12 (Breault).

[6] Under Section 7.4(a), in the case of a "Triggering Event[] set forth in . . . § 7.3(a)(iv)," the purchase price was "One Dollar ($1.00) per 0.25 Membership Units." A245, § 7.4(a). Thus, the Company gave Dr. Breault a check for $9.00 in payment for his two Class B Membership Units and 0.25 Class D Membership Unit. A318.

of the minds regarding the conditions for the Service Agreement's termination. The Service Agreement did not terminate, and Dr. Breault's practice did not cease to be a Straine Dental Management client, until the effective date of the Company's April 8, 2022 Notice to Dr. Breault. Accordingly, contrary to the Court of Chancery's determination, the Company's exercise of its Call Right *was* effective, and Dr. Breault is no longer a Member.

Although the Company has already produced the books and records that Dr. Breault sought when he filed this action, this appeal is not moot. Whether the Company successfully exercised its Call Right is an important legal issue because it bears on Dr. Breault's continued membership interest in the Company. As a result, an "actual controversy" remains. And it is one that, for the reasons previously discussed, the Court should decide in the Company's favor. *Tyson Foods, Inc. v. Aetos Corp.*, 809 A.2d 575, 582 (Del. 2002).

CONCLUSION

For these reasons, the Court of Chancery's ruling should be reversed and judgment entered in favor of the Company.

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Dated: March 3, 2023