EFiled: Nov 27 2023 04:37PM EST
Filing ID 71485809
Case Number 280,2023

IN THE SUPREME COURT OF THE STATE OF DELAWARE

IN THE MATTER OF THE JEREMY PARADISE DYNASTY TRUST and THE ANDREW PARADISE DYNASTY TRUST,	§	No. 280, 2023
	§	
	§	Court Below: Chancery Court of the State of Delaware
	§	
	§	C.A. No. 2021-0354-KSJM

APPELLANT'S REPLY BRIEF

Dated: November 27, 2023

ARMSTRONG TEASDALE LLP

Jonathan M. Stemerman (No. 4510)
1007 North Market Street, 3rd Floor
Wilmington, DE 19801
(302) 416-9667
JStemerman@atllp.com

Attorneys for Petitioner Below-Appellant Jeremy Paradise

Of Counsel:

John Sten
Byrd Campbell LLP
25 Arlington Street, Ste. 500
Boston, MA 02116
(617) 967-2820
jsten@byrdcampbell.com

Allison McFarland
Armstrong Teasdale LLP.
800 Boylston St., 30th Floor
Boston, MA 02199
AMcFarland@atllp.com

TABLE OF CONTENTS

TABLE OF AUTHORITIES

Page(s)

Cases

Other Authorities

INTRODUCTION

Fiduciaries' Answering Brief ("AB") reconfirms the errors of the Chancery Court's Opinion and reveals the deep-seated animosity that Fiduciaries have for Jeremy Paradise.

This should have been a very simple trust reformation case:

- Jeremy is the settlor and sole donor of assets to the Jeremy Trust;
- GFM, a Delaware law firm, drafted the Jeremy Trust to have the Grantor, Jeremy, in the first position of Article 12(h) enabling him to remove and replace the Trust Protector as is their custom;
- Jeremy received and read GFM's Outline setting forth this intention prior to receiving the first draft of the Trust from GFM;
- After issuance of the first draft of the Trust, Fiduciary Pomerance's law firm, Mintz, called GFM and falsely told them that Jeremy instead wanted his brother Andrew in Article 12(h)'s first position;
- GFM made that change under the mistaken belief that Mintz represented Jeremy; and
- Jeremy signed the final Jeremy Trust Agreement unaware that he no longer had the power to remove or replace the Trust Protector.

Instead, Fiduciaries' machinations have turned this case into something out of a Dickens novel, costing the Trust millions of dollars in legal fees. Ignoring the plain language of the Jeremy Trust, which states it is a donative trust formed for nominal consideration, Fiduciaries introduced the novel concept that the Trust instead represents a contract between Jeremy and Andrew. Putting aside the claim is without

merit, that very concept is a breach of Fiduciaries' duty to act in the exclusive interests of the beneficiaries of the Jeremy Trust (who are Jeremy's mother and his two children), and it places Fiduciaries in a position of representing Andrew's interest over the Grantor's and beneficiaries' interests.

Given that the current three fiduciaries are Andrew's lawyers and business partners, this is disappointing but no real surprise. Because the assets Jeremy donated to his Trust were stock in Andrew's company, Andrew considers the Trust to be his property. That is clear from the AB's Statement of Facts, which devotes most of its content to justifying Andrew's and Mintz's misdeeds.

Unfortunately for Jeremy, Fiduciaries' "intervention" strategy worked with the court below and, through some deft legal contortions and outright error, the Chancery Court declined to reform the Jeremy Trust. But in so doing, the Chancery Court ignored that the Jeremy Trust is a unilateral document without a true counterparty (the Bryn Mawr Trust of Delaware is the nominal counterparty as Trustee) and applied contract reformation law to find that "Jeremy has failed to prove that he had any intent at all when executing the [Jeremy Trust Agreement]." Ex. A at 2.

Fiduciaries continue this theme in the AB, applying only contract reformation law to their arguments and continuing their personal attacks on Jeremy to justify why they stole control of the Trust from Jeremy. Acknowledging the weakness of

their legal arguments, Fiduciaries resort to character assassination in an attempt to sway this Court into believing that if Jeremy gains control of his trust, (i.e., the ability to remove and replace the Trust Protector), then he will loot the trust of its assets. This unfounded and overly prejudicial assertion should not be countenanced. It is true that when Jeremy discovered that he had been duped by Mintz and Andrew his emotions ran high and temper flared. But Jeremy is not a beneficiary of the Jeremy Trust and any distributions (Fiduciaries have made none so far to Jeremy's children) are required to be for the benefit of Jeremy's children.

This Court should not lose sight of the fact that all the assets of the Jeremy Trust came from Jeremy alone—not Andrew. He is the living settlor of the Jeremy Trust and it is inequitable that he was deprived of his position to remove the Trust Protector from his own trust because of the deceptions of Mintz and Andrew, and GFM's admitted mistake. For the reasons stated in this Reply, as well as those stated in Appellant's Opening Brief ("OB"), this Court should reverse the Chancery Court's decision, grant reformation of the Jeremy Trust and vacate the fee award.

ARGUMENT

I. FIDUCIARIES' APPLICATION OF CONTRACT REFORMATION STANDARDS IS ERROR

A. Fiduciaries Misstate Appellant's First Question Presented

Fiduciaries' AB sidesteps addressing the Chancery Court's misapplication of *Cantor* by framing the first Question Presented as:

> Whether the standard for reformation under Delaware law required Jeremy to show by clear and convincing evidence that he came to a prior specific understanding that differed materially from the written agreement and whether the Court's factual finding that Jeremy failed to prove that he had any intent at all when executing the [Jeremy Trust Agreement] precludes Jeremy's reformation claims.

AB at 28 (quotations omitted). The true first Question Presented by Jeremy is:

> Whether the Chancery Court erred in concluding that *Cantor Fitzgerald, L.P. v. Cantor*, 2000 WL 30730 (Del. Ch. March 13, 2000) requires Jeremy to demonstrate a particularized expectation about Section 12(h) and not just a 'general understanding' of control of the Trust?

OB at 22 (quotations omitted). This alteration enables Fiduciaries to avoid addressing one of the Chancery Court's critical errors: the misapplication of contract reformation law to a trust law issue.[1] The standards for reforming a contract and a trust are entirely different. Contract reformation requires:

[1] Although Fiduciaries argue that the Jeremy Trust was formed for consideration, it is undisputed that the Jeremy Trust was drafted as a donative trust by GFM. A0654 (Jeremy Trust Agreement stating that it is established "in consideration of the mutual promises and covenants contained" therein). It is also undisputed that the Jeremy Trust was 100% funded by a gift from Jeremy. A0839. This is a clear statement of

(1) the parties came to a specific prior understanding[;]
(2) that differed materially from the written agreement.[2]

Comparatively, trust reformation requires:

(1) a mistake of fact or law, whether in expression or inducement, affected the specific terms of the document; and
(2) the settlor's intention.[3]

B. The Chancery Court and Fiduciaries Apply the Wrong Legal Standard

The Chancery Court's error is a question of law and not fact—rendering this Court's review *de novo*[4] because the wrong legal standard is employed by the Chancery Court and Fiduciaries.[5] It also renders inapposite the arguments made by Fiduciaries on pages 30-31 of their AB, where Fiduciaries cite to the Chancery Court's Opinion and *Parke*, 217 A.3d at 710, to claim that Jeremy "came to a specific prior understanding that different materially from the written agreement." Fiduciaries cite to *Cantor*, 2000 WL 307370, for the same proposition.[6] Those cases

---

the settlor's (Jeremy's) intent to form a donative trust that should be respected by this Court.

[2] *Parke v. Bancorp, Inc. v. 659 Chestnut LLC*, 217 A.3d 701, 712 (Del. 2019).

[3] *In re Est. & Tr. Kalil*, 2018 WL 793718, at *9 (Del. Ch. Feb. 7, 2018).

[4] *Bäcker v. Palisades Growth Capital II, L.P.*, 246 A.3d 81, 86, 95-96 (Del. 2021) (stating "[w]hether…an equitable remedy exists or is applied using the correct standard is an issue of law and reviewed *de novo*….").

[5] *See Roos v. Roos,* 203 A.2d 140, 142 (Del. Ch. Aug. 12, 1964) (discussing the standards for contract reformation versus a "voluntary declaration of trust").

[6] While cases like *Parke* have relevance as to certain overarching principles of reformation (such as the weight of "customary practice" in determining a parties' intent), their application of contract reformation's "specific prior agreement" standard is inapposite here. 217 A.3d at 710, 714. *See also Cerberus Intern. Ltd. v.*

concern reformation of a contract, not a trust. This is true for all the other cases that the Fiduciaries cite for their reformation standard: *Nationwide Emerging Managers*, 112 A.3d 878 (Del. 2015), *Glidepath Ltd. v. Beumer Corp.*, 2018 WL 2670724 (Del. Ch. June 4, 2018) and *AECOM v. SCCI Nat'l Holdings, Inc*., 2023 WL 6294985 (Del. Ch. Sept. 27, 2023).

Fiduciaries' attempts to distinguish Appellant's discussion of *Scion* and *Collins* likewise misses the point.[7] *Scion* shows that the Chancery Court's reading of *Cantor* is at odds with this Court's prior holdings (even in the context of contract reformation) and that requiring more than a "general understanding" as a matter of law is error.[8] Jeremy cites *Collins* for the same proposition: a party seeking reformation need not have a "particularized expectation" about the specific provision for which reformation is sought as long as their ultimate agreement (or intent) is clear.[9] The parties in *Collins* shared the intent to establish a real estate lot three-quarters of an acre and excluding the barn, separate and apart from any understanding of the terms of the deed.[10] That intention did *not* require their understanding of the specific deed provisions. Only a

---

Apollo Mgmt., L.P, 794 A.2d 1141, 1152-54 (Del. 2002) (noting that a parties' failure to read a document is irrelevant to reformation).

[7] AB at 32-33.

[8] *See Scion Breckenridge Managing Member, LLC v. ASB Allegiance Real Estate Fund*, 68 A.3d 665, 687 (Del. 2013) (stating that a parties' failure to read an agreement does not bar reformation of the same).

[9] *Collins v. Burke*, 418 A.2d 999, 1002-1003 (Del. 1980).

[10] *Id.*

general understanding was required to establish a three-quarter acre lot that excluded the barn.[11] The point here is analogous—Jeremy's intention to "control" his Trust is all the specificity required so that "the terms of the trust may be reformed by the court to conform the text to the intention of the settlor…"[12]

Finally, Fiduciaries contend that "Jeremy fails to cite a single case in which reformation was granted where the party seeking reformation had no particularized understanding of the provision he sought to reform."[13] No such cases regarding donative trusts[14] exist because the Chancery Court's application of the contract reformation standard to a non-business trust is unprecedented. Appellant's search of the legal record nationwide reveals that the Chancery Court's Opinion is first and only time that any court has applied contract reformation standards to reformation of a non-business trust.[15]

---

[11] *Id.*

[12] Restatement (Third), Property (Wills and Other Donative Transfers) § 12.1.

[13] AB at 31.

[14] Contract reformation standards apply to non-donative trusts, such as real estate trusts, investment trusts, etc.—because those trusts are formed for consideration (unlike the Jeremy Trust). *See, e.g., U.S. Bank N.A. as Trustee for Chevy Chase Funding, LLC v. McColley,* 2018 WL 6829123, at *2 (Del. Ch. Dec. 27, 2018) (citing *Scion* and *Cerberus* for the proposition that a "specific prior understanding" of the parties is required).

[15] Op. at 25 *cf. Roos*, 42 Del.Ch. at 45 (granting reformation based on presentation of indirect evidence of deceased settlor's intent).

C. Application of the Applicable Trust Law Demonstrates the Errors of the Opinion

The Chancery Court's and Fiduciaries' flawed application of contract reformation causes multiple errors in the Opinion and Fiduciaries' AB. For example, by replacing trust reformation standards with that of contract law, the Opinion (and AB) states that Jeremy:

- "ust show that a mistake of fact or law caused him to sign the Jeremy Trust Agreement because, as written, he thought it reflected his control over the Jeremy Trust."[16]

- Must "show that he 'came to a specific prior understanding that differed materially from the written agreement."[17]

- Cannot prevail "because he has not proven…that he held a mistake intent about Section 12(h)…."[18]

- Cannot prove unilateral mistake "because he failed to prove a mistake in the first place."[19]

These contentions wrongly focus on whether Jeremy had prior knowledge of the terms of Article 12(h) and whether *Jeremy* made a mistake as to what the final Trust Agreement said.[20] The correct analysis is whether a mistake of fact or law

---

[16] Ex. A at 24.
[17] *Id.* at 25 citing *Parke*, 217 A.3d at 712.
[18] *Id.* at 26.
[19] *Id.* at 38.
[20] Reformation "does not require proof that the donor personally made the mistake nor proof that the donor formulated the exact language needed to carry out his or her intention." Restatement (Third), Property (Wills and Other Donative Transfers) § 12.1.

(which is not just limited to Jeremy's own "mistaken intent") "**affected** the specific terms of the document" (i.e., the Jeremy Trust Agreement) such that it no longer reflects Jeremy's intent to be in control.[21] In other words, the question is not whether Jeremy had a mistaken intent. The question is whether *the language of the Jeremy Trust Agreement is mistaken so as not to express Jeremy's intent*. Both the Chancery Court and Fiduciaries admit that GFM, under the mistaken belief that they were carrying out Jeremy's instructions, changed Article 12(h) to remove Jeremy and put Andrew in control, and the evidence is plain that Jeremy did not intend that instruction.[22]

The Chancery Court's (and Fiduciaries') errors are further exemplified by their claims that "Jeremy has failed to prove that he had any intent at all when executing the [Jeremy Trust A]greement"[23] and "[a] party who has no belief [at all] is not mistaken."[24] A trust agreement is a unilateral document that reflects only the settlor's intention.[25] There must be an intent of the settlor to create it and its terms,

---

[21] *Id*.; *Kalil*, 2018 WL 793718, at *9.
[22] AB at 48.
[23] *Id.* at 29 (citing Op. at 2).
[24] *Id.* at 29 (citing Op. at 25 (citing *Cerberus*, 794 A.2d at 1155 which in turn cites *Cantor,* 307370 WL at *19)).
[25] *See Raymond L. Hammond Irrevocable Trust Agreement,* 2016 WL 359088 (Del. Ch. Jan. 28, 2016) (stating "the seminal rule in interpreting trusts is the settlor's intent").

otherwise it is void *ab initio*.[26] Taking the Chancery Court's statements of "no intent" to their logical conclusion would mean that the Jeremy Trust Agreement is of no legal effect (or should be rescinded) because it does not reflect the donor's intent to create it.[27]

In any event, it is uncontradicted that Jeremy received and read GFM's Outline which set forth how GFM would draft the Jeremy Trust for Jeremy.[28] Jeremy did not object to GFM's Outline for the Jeremy Trust, indicating his intention to follow GFM's outlined plan.[29] The first version of the Jeremy Trust Agreement drafted by GFM is consistent with GFM's Outline. It cannot be disputed that Jeremy would have stayed in that first position of Article 12(h) had Mintz not phoned GFM and falsely told them that Jeremy had a different intent from GFM's Outline. As

---

[26] *Cf. Cravero v. Holleger*, 566 A.2d 8, 13 (Del. Ch. July 18, 1989) (noting the intent of the settlor is determinative of whether a trust exists or not).

[27] Reformation (Third) of Trusts Reporter's Notes on § 62 states reformation; "involves the use of interpretation (including evidence of mistake, etc.) in order to ascertain—and properly restate—the true, legally effective intent of settlors with respect to the original terms of trusts they have created…."

[28] Fiduciaries claim (AB at 14 fn. 60) of contradiction is without merit. Their citations concern whether Jeremy read **drafts** of the Trust, not GFM's Outline. A1451:23-A1452:3, A1625:9-17, A3173:23-A3174:2; *but see* A1439, A3095-A3096, A3089 (Jeremy's testimony about receiving and reading GFM's Outline, as the Chancery Court properly noted).

[29] The Restatement (Third) of Property recognizes the issue of inattentiveness or lack of understanding regarding wills, which is analogous here: "Some testators are inattentive, some find it difficult to understand what their solicitors say and do not like to confess it, and some make little or no attempt to understand. As long as they are assured that the words used carry out their instructions, they are content." Restatement (Third) of Trusts cmt. l.

noted in the Restatement (Third) of Trusts, the question is not whether the settlor understands the trust, but does "the trust instrument say[] what it was supposed to say…"? Indeed, the Chancery Court admits that Article 12(h) does not say what it was supposed to say (i.e., expressing Jeremy's intent) but instead expresses *Andrew's intent:*

> [O]n March 19, 2019, Mintz attorney Alison Glover contacted GFM and provided Andrew's inputs to the initial drafts. When speaking to GFM, Glover instructed GFM to edit Section 12(h) of the Jeremy Trust Agreement to place Andrew in the first position. On March 20, 2019, GFM incorporated Andrew's changes and GFM attorney Joe Bosik emailed the revised drafts to Glover for her review.[30]

D. The Chancery Court Erred in its Interpretation of Cantor

Fiduciaries' claim that the Chancery Court and Jeremy both "characterized the facts in similar fashion" regarding *Cantor* and therefore Jeremy is merely challenging the Chancery Court's "underlying factual findings."[31] That is not true. Jeremy is challenging the finding that *Cantor* requires a "particularized expectation about Section 12(h)"[32] and not just a "general understanding" of Jeremy's intent as settlor.

The Chancery Court and Fiduciaries each misstate the holding of *Cantor* even as to contract reformation. First, Iris Cantor was denied reformation not because she

[30] Ex. A at 11.
[31] AB at 35.
[32] Ex. A at 32.

admitted lacking "an understanding *of the specific provisions* of the agreement [she] sought to reform" but because she "either candidly admitted under oath that [she] had no such understandings, denied repeatedly that such understandings existed [at the time of drafting] or simply refused to reveal those understandings" concerning the three agreements at issue in *Cantor* (a 1993 Partnership Agreement, a 1996 Settlement Agreement and a 1996 Partnership Agreement).[33]

Second, Fiduciaries are wrong that the evidence in *Cantor* indicated that Mrs. Cantor's "purported 'general understanding' was largely developed after the signing of the instrument."[34] It found that contention meritless. The *Cantor* court expressly found there was no mistake by Mrs. Cantor (or the other reformation defendants)—not that a "general understanding" constituted no mistake. As the *Cantor* court stated in its opinion: "At most, the evidence suggests that the [reformation defendants] object now to the terms **for which [they] previously bargained or about which *they* remained silent** at the critical point in the 1996 settlement negotiations. Contracts are not reformed to provide parties with bargains they failed to obtain through negotiations."[35]

---

[33] Also, the *Cantor* reformation defendants were seeking to *add new language* to insert a substantive contract right*, they were not seeking to change existing language* that was previously altered. *Cantor*, 200 WL 307370, at *6, *8.
[34] AB at 37.
[35] *Cantor* 2000 WL 307370, at *9 (italics in original, bold added).

II. APPELLEES MISCHARACTERIZE JEREMY'S ARGUMENTS AND THE CHANCERY COURT'S OPINION

A. Fiduciaries Do Not Refute the Relevance of GFM's Practice and Custom

Fiduciaries' argument that the Chancery Court "properly rejected" Jeremy's reliance on GFM's original draft is as devoid of merit as it is of supporting law. As an initial matter, Fiduciaries claim Jeremy waived his GFM imputation/agency argument.[36] But Jeremy's imputation argument is properly before this Court, having been presented and argued previously in the Chancery Court as well as in Appellant's OB.[37] Other than claiming waiver, Fiduciaries do not oppose the agency principle of imputing of GFM's original placement of Jeremy in the first position of Article 12(h) because they cannot. GFM had authority to draft and edit the Jeremy Trust Agreement *on Jeremy's behalf*. Thus, GFM's intent is imputed to

[36] AB at 40, fn. 178.

[37] *In re IBP, Inc. S'holders Litig*., 789 A.2d 14 (Del. Ch. 2001) is inapplicable. There, the Chancery Court noted that it considered defendant Tyson Foods to have waived certain arguments that were made for the first time in its post-trial brief. *Id.* at 62. But the Chancery Court nonetheless went on to fully address each of Tyson's new arguments stating "I may be wrong on that point…" Further, Fiduciaries did not object to inclusion of Jeremy's imputation argument during its post-trial argument, and thus waived any objection to it now on appeal. Likewise, the Chancery Court in this matter did not independently find Jeremy's argument waived. Finally, *IBP* concerns waiver at the trial level, not at the appellate level. *See Murphy v. State*, 632 A.2d 1150, 1152 (Del. 1993) (quoting Supr. Ct. R. 14(b)(iv), (vi) ("The party appealing is generally entitled to frame the issues on appeal.")).

Jeremy as his agent.[38] Instead, Fiduciaries claim, without any legal citation, that an agent's intent cannot be imputed to a party for reformation. Caselaw shows otherwise.[39]

Even apart from imputation to Jeremy, GFM's custom of placing the Grantor in the first position of Article 12(h) has significant probative value. Customary practice is strong evidence of intent under Delaware law.[40] And contrary to Fiduciaries' claims, it was not an assumption by GFM—it was their customary "best practice" for a Delaware Dynasty Trust which only varied here because GFM was falsely instructed by Mintz.

Jeremy received and read the GFM Outline which told him how GFM intended to proceed according to their customary practice.[41] Jeremy was entitled to rely on the fact that GFM's customary practice in forming his Trust would be followed—especially given that he is not a lawyer and Delaware trusts are complex

---

[38] *See* Deborah A. DeMott, The Lawyer as Agent, 67 Fordham L. Rev. 301, 307 (1998).

[39] *See Parke*, 217 A.3d at 712 (analyzing in a contract reformation context whether one of Parke's "agents, acting under actual or apparent authority, came to [a specific prior] understanding"). Although Parke, as a corporation, can only act through its agents, this Court imposed no restriction to natural persons on that basis. *Id.*

[40] *Iacono v. Est. of Capano*, 2020 WL 3495328, at *14 (Del. Ch. June 29, 2020) (noting that "courts look to all of the surrounding circumstances, including the course and substance of the negotiations, prior dealing between the parties, and customary practices in the trade or business involved…"); *Parke*, 217 A.3d at 714 (noting customary practice as evidence of intent).

[41] *See infra* at 10, n. 28.

instruments even for lawyers not versed in them. Further, there is nothing in the record about Jeremy bargaining away control of the Trust or instructing GFM to change Article 12(h) (apart from Andrew's uncredited testimony)—rendering GFM's subsequent deviation from its customary practice regarding Article 12(h) indisputably *unintended* by Jeremy.[42]

B. The Record Evidence Clearly Shows that Jeremy Maintained an Intent to Control the Jeremy Trust

Fiduciaries' mere agreement with the Chancery Court's factual determinations, without more, cannot defeat Jeremy's well-founded legal and factual arguments on appeal. Fiduciaries do not cite any cases in this section of their AB and their reiteration of the Opinion without corresponding legal citation should be rejected. Contrary to Fiduciaries' AB, the evidence and relevant Delaware law presented in Appellant's OB establishes Jeremy's intent to control the Jeremy Trust both before and after he signed it.

The Trust Terms Email expresses Jeremy's intent, memorializing Jeremy's initial understanding of the trust that he (not Andrew) would create. Jeremy's OB explains how the Chancery Court erred in determining that this email was "weak evidence" of Jeremy's intent, addressing, with caselaw, the reasons why.[43] Here,

---

[42] *See Cerebrus*, 794 A2d at 1154 ("a rational trier of fact would have expected to see some evidence that this point had been negotiated away").
[43] OB at 32-34.

the Fiduciaries only echo the Chancery Court's statements that Jeremy alleged constitute error. They do not respond to any of Jeremy's legal arguments regarding the Trust Terms Email.

Arguing that the Chancery Court's analysis is "grounded in the record" is not sufficient, nor is it an accurate opposition on appeal. The record shows Jeremy testified that the Trust Terms Email was sent to Mintz "to translate [the Trust Terms Email] into some legal construction that would be signable the whole point was I [Jeremy] was supposed to be in charge of the Jeremy [] Trust."[44] Further, the Chancery Court and Fiduciaries ignore that Andrew admitted that the original deal was that Jeremy would be in control of the Jeremy Trust.[45] The Chancery Court further ignored that there was no evidence (beyond Andrew's unsupported claims) that Jeremy's intent in this regard ever changed.

The February 25, 2019 phone call with Steinkrauss, Andrew and Jeremy is neither "free-standing" nor "uncorroborated."[46] Fiduciaries incorrectly assert that Jeremy couldn't recall anything about the February 25, 2019 call in his deposition,[47] but Jeremy testified at his deposition that he spoke to Steinkrauss in late February 2019 about "how to actually set up some trusts."[48] Fiduciaries claim that Jeremy

---

[44] A1460-A1464.
[45] A3339:12-21.
[46] Op. at 34.
[47] AB at 44.
[48] A1421:7-1422:19.

testified as to not remembering that conversation lacks evidentiary support as their citation to Jeremy's supposed quotation is wrong, and the testimony they cite concerns purportedly *fraudulent* statements made by Mintz.[49]

Fiduciaries incorrectly claim that Steinkrauss told Jeremy "that [he] could not be the trustee of his own trust…."[50] That is another misstatement. At his deposition, Fiduciaries' counsel asked Jeremy: "Kurt Steinkrauss told you…that you couldn't be the trustee, correct?" to which Jeremy answered: "No, that I couldn't be the beneficiary."[51] Steinkrauss then described the concept of Trust Protector to Jeremy, and Jeremy understood he would "not be directly the direct trustee"—but that he would indirectly control the Trust.[52] As Jeremy testified at deposition, "I would ultimately have control over the trust protector."[53] Moreover, Jeremy's testimony regarding the February 25, 2019 phone call is corroborated by Pomerance's testimony that "Kurt was overseeing Gordon's work on behalf of Andrew and Jeremy in putting together the trusts."[54]

Regarding Jeremy's *ex post* statements regarding his intent to control the Jeremy Trust, Fiduciaries again respond only by reiterating the Chancery Court's

---

[49] AB at 44.
[50] AB at 42.
[51] A1463:19-24.
[52] A1464:15-18.
[53] A1422:6-19.
[54] A1014 at 51:10-14.

statements in the Opinion and without any citation to Delaware case law. They make no attempt to refute the Delaware authority cited in the OB and their arguments are thus without merit.[55]

[55] AB at 43; OB at 35.

III. THE CHANCERY COURT AND FIDUCIARIES FAIL TO ADDRESS JEREMY'S CLAIMS OF FRAUD

A. Fiduciaries' Answering Brief Mischaracterizes the Opinion

1. Fiduciaries misstate the Question Presented.

As they did with Jeremy's argument regarding *Cantor* in Section One of their AB, Fiduciaries misstate the third Question Presented to sidestep addressing its contentions. In his OB, Jeremy presented the following question:

> Whether the Chancery Court err[ed] in limiting Jeremy's "fraud theory" to "the various promises by Steinkrauss, Andrew, and others that Jeremy would be in control of the Jeremy Trust" and ignoring relevant evidence about Mintz's misrepresentations?

Instead, the Fiduciaries' AB states:

> Whether the [Chancery] Court erred in concluding that its factual findings that Jeremy failed to establish any intent with respect to the Jeremy Trust Agreement and that he failed to show he relied on any representations made to him throughout the trust agreement drafting process preclude his fraud clam seeking reformation.

2. Fiduciaries' Answering Brief ignores Jeremy's claim of equitable fraud.

Fiduciaries' AB ignores that the purpose of a claim of equitable fraud "is to restore the parties to the *status quo ante* and prevent the party who is responsible for the misrepresentation from gaining a benefit."[56] Here, denying reformation would

[56] *Bonnco Petrol, Inc. v. Epstein*, 560 A.2d 655, 662 (Sup.Ct.N.J. Mar. 13, 1989) citing *Enright v. Lubow*, 493 A.2d 1288 (App.Div. 1985) and W. Keeton, D. Dobbs, R. Keeton, D. Owen, *Prosser & Keeton on The Law of Torts* § 105, 729 (5 ed. 1984)).

give Mintz and Andrew an inequitable benefit, as Mintz attorney Pomerance continues to sit as Trust Protector of the Jeremy Trust and Andrew continues to hold the first position of Article 12(h)—all because Mintz lied to GFM about Jeremy's intent.

Fiduciaries misstate the purpose of Appellant's citation to *Haney v. Blackhawk Network Holdings, Inc.*[57] which illustrates that equitable fraud encompasses misrepresentations beyond concealment of the terms of the at-issue document—which is the error made by the Chancery Court.[58] Fiduciaries then misuse *Haney* as an excuse to again switch to their erroneous contract reformation standard, arguing that it shows that a "specific prior understanding" of Article 12(h) is required.[59] That is contrary to established Delaware trust law.[60]

B. Jeremy has Demonstrated that Mintz's Misrepresentations Induced GFM to Change the Jeremy Trust Agreement

1. Mintz made misrepresentations to Jeremy and GFM.

Despite Fiduciaries' claims to the contrary,[61] there can be no serious doubt that Mintz deceived Jeremy and GFM as to whose interests they were representing in the formation of the Trusts and that resulted in GFM's change to Article 12(h).

---

[57] 2016 WL 769595 (Del. Ch. Feb. 26, 2016).
[58] OB at 38; Op. at 24.
[59] AB at 47 citing *Haney*, 2016 WL 769595, at *10.
[60] *Kalil*, 2018 WL 793718, at *9.
[61] AB at 47-49.

Steinkrauss', Pomerance's and Glover's words and actions between 2018 and 2021 caused Jeremy and GFM to believe that (1) Mintz was Jeremy's lawyers and was acting in his interests and (2) the change to Article 12(h) of the Jeremy Trust was Jeremy's intent (when that is now known to be false).[62]

Fiduciaries disclaim any obligation of Mintz to reveal that they were adverse to Jeremy in connection with the formation of the Jeremy Trust—even when Mintz knew that they were "mistakenly" copied on emails from GFM pertaining to Jeremy.[63] But Delaware law requires Mintz to make disclosure under such circumstances.[64] As GFM testified, they understood Mintz was representing Jeremy based on Mintz's statements and actions, as well as the customs of the legal trade.[65]

---

[62] A2994, A2942, A2983, A3030, A3075-3076, A3425-3426; *see also* A1151-A1152; A0213-A0273.

[63] AB at 47-49. Steinkrauss expressed a belief that he did not need to tell GFM that he/Mintz were not counsel to Jeremy because "I never thought we represented [Jeremy]." A2065-A2066.

[64] *Matthews Office Designs, Inc. v. Taub Investments*, 647 A.2d 382 (Del. 1994) citing Restatement (Second) of Torts § 551(2) (1976) (noting that existence of a "fiduciary duty or other similar relation of trust and confidence" or "customs of the trade" give rise to a duty to disclose).

[65] *See, e.g.,* A2805-2809 (Michael Gordon stating, among other things, that they had dealt with Mintz before on behalf of Mintz clients and "with our practice where we represent clients throughout the country with Delaware-centric trust planning, it's very common for our interaction to not be with the client directly but with [their] counsel and, therefore, when we receive comments from counsel it's our understanding that that counsel is representing the client.").

Further, although the Chancery Court did not specifically find that Mintz was Jeremy's legal counsel as a matter of law, it found that Mintz gave legal advice to Jeremy concerning the Trust such that a duty of confidence arose between Mintz and Jeremy.[66] That too mandates disclosure by Mintz.[67] Further, it is clear from the facts noted by the Chancery Court that an attorney-client relationship arose between Jeremy and Mintz concerning the formation of the Trusts—which also gives rise to a duty of disclosure.[68]

2. GFM changed the Jeremy Trust Agreement in reliance on Mintz's misrepresentations.

For the reasons in Appellant's OB and restated herein, Jeremy has shown his intent to control his Trust. He has also shown, with undisputed evidence, that: (1) GFM drafted the Jeremy Trust Agreement to place Jeremy in the first position; (2) Mintz called GFM and falsely told them that Jeremy intended Andrew to be in the first position to remove and replace the Trust Protector; and (3) for that reason—**and that reason only**—the executed Jeremy Trust gives Andrew the sole power to remove and replace the Trust Protector.

Ignoring this reality, Fiduciaries claim that the Chancery Court found that

---

[66] (Op. at 30 n. 170; 12; 14; 6 fn. 28; 33-34; 2; 11; 9).
[67] *Matthews*, 647 A.2d 382.
[68] *Id.; see also* A0057-A0062; A3407-A3408; A1007-A1009; - A3077-A3083; A0064; A0065; A0274-A0515; A3044, A0843-A0845; A0846-A0869, A3106-A3107.

"Jeremy 'cannot show that he relied on any representations made to him throughout the trust drafting process.'"[69] This assertion by Fiduciaries ignores another of the Chancery Court's errors where it, inexplicably and without citation to the record, limited Jeremy's fraud claims solely to allegations of "various promises by Steinkrauss, Andrew, and others that Jeremy would be in control of the Jeremy Trust…."[70] That erroneous limitation by the Chancery Court ignores Jeremy's claims that Mintz's misrepresentations to GFM caused Jeremy to lose the power to remove and replace the Trust Protector of the Jeremy Trust in the first place. Fiduciaries (and the Chancery Court) also ignore that Jeremy, believing that Mintz was representing him and acting in his interests, relied on Mintz to advise him as to the material terms and changes to the Jeremy Trust.[71] Those misrepresentations, as well as Steinkrauss' April 23, 2019, concealment from Jeremy of the change to Article 12(h) warrants reformation. As has been repeated: the only reason Article 12(h) was changed from how it was originally drafted by GFM is because of Mintz's misrepresentations to Jeremy and GFM about its representation and allegiances.

---

[69] AB at 47-48 (quoting Op. at 38).
[70] Ex. A at 24.
[71] *See, e.g., A3094*-A3096 (Jeremy testified that he did not contact anyone at GFM upon receiving Mintz's March 20, 2019 email because Jeremy believed that any "changes were all summarized right in [Mintz's] email…" and further displaying his belief that he would control the Jeremy Trust because "the only thing [Jeremy] really thought about" at that time was that he may have to "find somebody new" to replace Pomerance as Trust Protector).

CONCLUSION

For the foregoing reasons, the Chancery Court's Opinion should be reversed, and the Jeremy Trust reformed as requested, and the Chancery Court's July 19, 2023 fee order vacated.

Dated: November 27, 2023

ARMSTRONG TEASDALE LLP

/s/ Jonathan M. Stemerman
Jonathan M. Stemerman (No. 4510)
1007 North Market Street, 3rd Floor
Wilmington, DE 19801
(302) 416-9667
Email: jstemerman@atllp.com

Attorneys for Petitioner Below-Appellant, Jeremy Paradise

Of Counsel:

Allison McFarland
Armstrong Teasdale LLP
800 Boylston St., 30th Floor
Boston, MA 02199
(617) 967-2820
AMcFarland@atllp.com

John Sten
Byrd Campbell LLP
800 Boylston Street, 16th Floor
Boston, MA 02199
jsten@byrdcampbell.com

CERTIFICATE OF SERVICE

I, Jonathan M. Stemerman, hereby certify that on November 27, 2023, a true and correct copy of *Appellant's Reply Brief* was served on the following counsel of record via File & Serve*Xpress*:

Connolly Gallagher LLP
Henry E. Gallagher, Jr. (#495)
Gregory J. Weinig (#3519)
Scott E. Swenson (#4766)
Jarrett W. Horowitz (#6421)
1201 North Market Street, 20th Floor
Wilmington, Delaware 19801

Dated: November 27, 2023

/s/ Jonathan M. Stemerman
Jonathan M. Stemerman (No. 4510)