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IN THE SUPREME COURT OF THE STATE OF DELAWARE

JOSEPH MANHEIM; WEST 36TH, INC.; and REATH & CO., LLC, Defendants-Below, Appellants, v. YOUNG MIN BAN, Plaintiff-Below/Appellee,	**No. 377, 2023** ON APPEAL FROM COURT OF CHANCERY THE STATE OF DELAWARE C.A. No. 2019-0005 (VCL)

ANSWERING BRIEF OF APPELLEE YOUNG MIN BAN

Dated: January 3, 2024

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NATURE OF PROCEEDINGS

On January 2, 2019, Joseph Bamford[1] commenced this equitable action in the Court of Chancery. Ban moved to intervene, which was authorized on April 7, 2019. Bamford and Ban then filed a consolidated complaint on April 15, 2019. Defendants moved to dismiss the Complaint, which motion was denied in part on February 28, 2020. The Complaint was amended, and the remaining claims in the case were tried over four days beginning on June 8, 2021 and concluding on June 11, 2021.

After trial, the court below issued its Certain Post-Trial Factual Findings[2] dated July 21, 2021, in which it made certain rulings and factual filings, including the finding that "Ban never hacked a DropBox account belonging to DVRC, Manheim, or anyone else associated with DVRC. He only accessed materials to which he had access through his personal DropBox account."[3] Though Appellants timely sought reargument as to certain of the findings of the Court, Appellants did not seek reconsideration of, or reargument as to, such findings, which were fatal to Appellants' claims for conversion or under the Computer Fraud and Abuse Act and the Pennsylvania Uniform Trade Secrets Act.

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[1] Unless otherwise stated, Ban adopts the definitions of the parties as used by Appellants in their Opening Brief.
[2] A550-573.
[3] A573.

Following post-trial briefing, which was focused by the Court's earlier Certain Post-Trial Factual Findings, the Court entered its 125-page Memorandum Opinion dated June 24, 2022 (the "Opinion"), which fully and finally disposed of all parties and all claims except for motions for attorneys fee and costs. A true and correct copy of the Opinion is attached as Exhibit "A" to Appellants' Opening Brief. Appellants did not seek reconsideration of, or reargument as to, the Opinion. Appellants did not timely file an appeal from the Opinion. Rather, Appellants filed a Notice of Appeal on October 6, 2023, sixteen (16) months after the entry of the Opinion and nearly fourteen (14) months after a timely motion for reargument by plaintiff Bamford was decided. The Court issued its Final Order and Judgment on September 6, 2023 and it is from this Final Order and Judgment that Appellants appeal.

SUMMARY OF ARGUMENT

1. Denied. The Court of Chancery properly held Manheim liable for Mandle's (his "stooge's") compensation and in applying the entire fairness standard in doing so. "Self-interested compensation decisions made without independent protections are subject to the same entire fairness review as any other interested transaction."[4] *Valeant Pharm. Int'l v. Jerney*, 921 A.2d 732, 745 (Del. Ch. 2007). In light of the almost "farcical" testimony by Mandle and her demonstrable lack of actual role, the Court of Chancery's factual determinations leading to the applicability of the entire fairness standard to Mandle's compensation are "sufficiently supported by the record and are the product of an orderly and logical deductive process." *Levitt v. Bouvier*, 287 A.2d 671, 673 (1972); *Smith v. Van Gorkom*, 488 A.2d 858, 871 (1985).

2. Denied. The Court of Chancery did not commit reversible error by determining that "Ban never hacked a DropBox account belonging to DVRC, Manheim, or anyone else associated with DVRC. He only accessed materials to which he had access through his personal DropBox account." By definition, the uncontroverted finding by the Court of Chancery that Ban only accessed materials on his personal DropBox account and not through any other party's DropBox account (as his access had been successfully terminated) is supported by the record

[4] Opinion at 98.

and precludes any finding of a violation of the Computer Fraud and Abuse Act, the Pennsylvania Uniform Trade Secrets Act or a finding of common law conversion.

STATEMENT OF FACTS[5]

Ban relies on and incorporates herein, the facts as cited to and determined by the Court of Chancery in its Opinion (Exhibit "A" to Appellants' Opening Brief) and its Certain Post-Trial Factual Findings (A550-A573).

In their Statement of Facts, Appellants make numerous factual statements that are at not consistent with the actual findings made by the Court of Chancery, are not supported by any citation to the record, or where supported by citation to the record, such evidence does not support the alleged fact. Examples of this loose reference to facts in Appellants' Statement of Facts are as follows:

a. "Penfold would hold a non-managing interest in DVRC, and Manheim, Bamford and Ban would hold most (and for Bamford, all) of their interest in DVRC though Penfold as limited partners, while Manheim managed Penfold with ReathCo, his personal company, as the general partner." Appellants Opening Brief, p. 9, *citing* to Opinion, p. 25.

Actual Factual Findings:

"When Manheim formed Penfold, he identified ReathCo as its general partner on the certificate of formation. It was a logical entity for Manheim to use, but Bamford and Ban had not agreed on ReathCo serving in that role. Manheim, Ban, and

[5] Except where otherwise noted, the facts are taken from the Court of Chancery's Opinion (Exhibit "A" to Appellants' Opening Brief) and its Certain Post-Trial Factual Findings (A550-A573).

Bamford also had not agreed on the terms of Penfold's limited partnership agreement." Opinion, p. 25.

Inaccuracy Noted: Contrary to Appellants' statement, the actual finding indicates that the parties had not agreed that their interests in DVRC were non-managing or that ReathCo would act as managing partner of Penfold.

b. "The Reorganization was effectuated through two agreements: the Admission Agreement, which made Manheim, Bamford and Ban non-managing members of DVRC (which until that point was 100% owned by WestCo) . . ." Appellants Opening Brief, p. 9, *citing* to Opinion, p. 26-29.

Actual Factual Findings:

"To carry out the Reorganization, Manheim and Ban drafted two agreements. The first agreement admitted Manheim, Ban, and Bamford as members of DVRC." Opinion, p. 25.

Inaccuracy Noted: The actual finding makes no reference to whether any of the parties were "non-managing" members.

c. "In early 2018, Ban was suspended from DVRC after other members of DVRC's management learned Ban had, without their knowledge, been corresponding with investors who were threating (sic) lawsuits if their investments were not redeemed. [No citation to the record].

Actual Factual Findings:

"On May 14, 2018, Frank came across email exchanges between Ban and one of DVRC's representatives in China. The emails discussed threats that certain investors in DVRC's funds would file lawsuits if their investments were not redeemed after they received their green cards. JX 826 at '002, '006–07; Frank Tr. 763–64. In the e-mail chain, Ban proposed potential ways to resolve the lawsuits. *See* JX 826 at '003–14." Opinion, p. 46.

Inaccuracy Noted: The actual finding indicates communication with a DVRC representative in China, not an investor and further indicates that Ban was trying to find ways to resolve the potential litigation issues.

d. "Ban then provided screenshots of the ReathCo Dropbox account he had accessed." Appellants Opening Brief, p. 12, fn. 30.

Inaccuracy Noted: Neither the evidence supporting this allegation – A209, nor the Opinion itself support that Ban accessed the ReathCo Dropbox account. Instead, this email includes only a screenshot and screenshot indicates that each document had last been modified by Manheim, not accessed or modified by Ban as one might expect if access had actually occurred.

e. "Metadata from documents produced by Ban . . . shows that Ban downloaded numerous documents from Mannheim's personal Dropbox account. Ban selected and downloaded documents he believed could be

helpful to his case, such as the receipt for Manheim's June 2016 trip to London." Appellants Opening Brief, p. 12, fn. 31.

Inaccuracy Noted: The evidence supporting this allegation – A131-A134 – identifies no metadata indicating anything relating to Ban. Rather, it is a copy of what appears to be a travel itinerary.

f. "After Ban's suspension, it was discovered that Ban had additional communications with investors in which he made offers that violated USCIS regulations, and entered into a finder's fee arrangement that violated securities laws." Appellants Opening Brief, p. 12-13, fn. 33, *citing* to Opinion, p. 48.

Actual Factual Findings:

"In his statement to the WestCo Board, Manheim reported that Ban had sent letters to investors that violated USCIS regulations. He also reported that Ban had entered into a finder's fee agreement with an agent that was prohibited by securities laws. JX 826 at '002–03." Opinion, p. 48.

Inaccuracy Noted: At no time did the Court of Chancery find that Ban violated any USCIS regulations or securities laws. Rather, the Court of Chancery indicated that Manheim had reported to the WestCo Board his belief that a violation had occurred. The suggestion that an actual violation had been found by the trial court to have occurred is nowhere supported by the record.

ARGUMENT

I. THE COURT OF CHANCERY PROPERLY HELD MANHEIM LIABLE FOR MANDLE'S COMPENSATION AND IN APPLYING THE ENTIRE FAIRNESS STANDARD

A. Question Presented

Did the Court of Chancery commit an error of law by concluding that Mandle was acting as Manheim's "stooge" as a member of the board of WestCo and officer of DVRC such that the propriety of her compensation should be determined under the "entire fairness" standard of review?

B. Scope of Review

This Court reviews the "Court of Chancery's conclusions of law *de novo*". *DV Realty Advisors LLC v. Policemen's Annuity and Benefit Fund*, 75 A.3d 101, 108 (Del. 2013). The applicable standard by which a defendants' conduct is to be judged is a legal question subject to *de novo* review. *Fiduciary Trust Co. v. Fiduciary Trust Co.*, 445 A.2d 927, 930 (1982).

This Court reviews findings of fact on which the trial court's conclusions of law are based to determine if they are sufficiently supported by the record and are the product of an orderly and logical deductive process. *Levitt v. Bouvier*, 287 A.2d 671, 673 (1972); *Smith v. Van Gorkom*, 488 A.2d 858, 871 (1985).

C. Merits of Argument

This Court need look no further than to two resources in determining the propriety of the decision of the Court of Chancery on this issue. First, the Court

should review the principal case cited by Appellants regarding the appropriate standard of review, *Nixon v. Blackwell*, 626 A.2d 1366, which provides a well-reasoned road-map for evaluating whether the Court of Chancery appropriately approached and resolved the issue of Mandle's compensation as a component of Manheim's behavior falling well short of meeting his fiduciary obligations. Second, the Court should take careful note of the thorough and searching examination actually undertaken by the Court of Chancery, including a deep scrutinization of the facts before it, including Mandle's own testimony. Needless to say, the Court of Chancery's analysis was principled and disciplined such that it leaves this Court, as the reviewing court, no difficulty understanding the bases for, or the propriety of, the decision.

Appellants do not argue on appeal that the Court of Chancery failed to delineate and articulate its findings of fact or conclusions of law. Appellants do not argue that the Court of Chancery's determinations were the product of a subjective or reflexive impression based solely on suspicion, *i.e.* the "smell test". Appellants do not even argue that the Court of Chancery failed to engage in a principled and disciplined analysis.

Rather, at best, Appellants simply disagree with the Court of Chancery's conclusions based on the facts before it and ignore this Court's admonition that the

Court of Chancery as a "court of equity must necessarily have the flexibility to deal with varying circumstances and issues". *Id*. at 1378.

The Court of Chancery devoted seven pages of its Opinion to a considered analysis of Mandle's role as a director of WestCo's Board, her compensation in that role and whether Manheim faced a conflict of interest when determining (as he did solely) her compensation. After detailing the extensive personal and professional history between Manheim and Mandle, the Court of Chancery acknowledged that, without more, Plaintiffs would not have carried their burden of proving the applicability of the entire fairness standard to Mandle's compensation. Rather, the Court of Chancery stated "*[t]hose ties* are not sufficient to raise meaningful questions about Manheim's independence from Mandle or his ability to set her compensation, so the business judgment rule applies as the default standard of review." Opinion, p. 102 (Emphasis added).

While Appellants would leave this Court with the belief that somehow the Court of Chancery jumped, without sufficient support, to the conclusion that Manheim's decisions were nonetheless conflicted and subject to heightened scrutiny under the "entire fairness" standard, nothing could be further from the truth. The Court of Chancery did <u>not</u> determine that Mandle's appointment as a member of the board was disinterested – rather, the Court of Chancery found that Manheim's historical ties to Mandle, viewed alone, did not indicate a self-interested transaction

and that, without more, the business judgment rule may have been the appropriate standard of review of Manheim's conduct. Needless to say, there was indeed more to the story and the Court of Chancery, viewing all of the evidence before it, engaged in the exact thorough and searching examination, that led to the principled analysis contained in the Opinion - including a deep scrutinization of Mandle's own, uncontroverted, testimony. The result of that searching examination was precisely as Plaintiffs had alleged – Mandle was in fact and in practice Manheim's "stooge" who rubber-stamped the decisions evidencing Manheim's overmastering control, self-dealing and other breaches of his duty of loyalty. Mandle's no-show position was indeed a sinecure - a position requiring little or no work but giving the holder status or financial benefit.[6]

The Court of Chancery recognized that the timing of Mandle's appointment to the board was suspect, coming on the heels of Manheim's spurious removal of both Ban and Bamford (who were actively investigating Manheim's behavior) from the board.[7]

As recognized by the Court of Chancery, "[e]ntity law distinguishes between the standard of conduct that governs a fiduciary's behavior and the standard of review that a court applies to determine whether the standard of conduct was

[6] Opinion, p. 2.
[7] Opinion at 50.

breached.[8] *Chen v. Howard-Anderson*, 87 A.3d 648, 666 (Del. Ch. 2014); *In re Trados Inc. S'holder Litig.*, 73 A.3d 17, 35–36 (Del. Ch. 2013). At the very outset of its analysis of the alleged failures by Manheim, the Court of Chancery identified the available standards of review (business judgment, enhanced scrutiny and entire fairness), and discussed the relative burdens on the parties generally in each standard.[9] In doing so, the trial court confirmed that where, as here, a fiduciary is a controller-fiduciary and engages in self-dealing, the entire fairness standard applies and the burden lies with the fiduciary to prove that such self-dealing was entirely fair to not only the entity but to its minority investors.[10] In this case, Manheim, the controller-fiduciary, failed to put in place any protections that would have permitted a less onerous standard of review regarding the contested transactions – including Mandle's compensation, which available protective steps were fully discussed by the Court of Chancery.[11] Instead, when his actions were questioned by Ban and Bamford, Manheim summarily dismissed both from the board and packed it with his no-show stooge – Mandle.[12] As a result, and following this thorough analysis of the standards of review available to the trial court, the Court of Chancery correctly found

[8] Opinion at 76, fn. 21
[9] Opinion at 75-76.
[10] Opinion at 75.
[11] Opinion at 76-77.
[12] Opinion at 50.

that "Manheim therefore bore the burden of proving that the transfers at issue were entirely fair."[13]

With the applicable standard addressed and articulated, the Court of Chancery then discussed the two concepts that are generally considered in determining fairness: fair dealing and fair price, cautioning that entire fairness is an "unitary" concept and neither of the two components is determinative of the whole, but interact with each other in a holistic fashion to allow the Court of Chancery to fashion an appropriate result in often differing situations.[14]

As further support for the applicable standard, the Court of Chancery confirmed that "[s]elf-interested compensation decisions made without independent protections are subject to the same entire fairness review as any other interested transaction."[15] *Valeant Pharm. Int'l v. Jerney*, 921 A.2d 732, 745 (Del. Ch. 2007). In reaching the conclusion that entire fairness was the appropriate standard to review compensation paid to Mandle, the Court of Chancery applied particular importance to the fact that Mandle – herself a fiduciary – was facilitating breaches of duty by Manheim – another fiduciary - in analyzing whether "her responsibilities and

[13] Opinion at 77.
[14] Opinion at 78-79.
[15] Opinion at 98.

knowledge", were sufficient "to support a finding that it constitutes an illicit and symbiotic *quid pro quo*."[16]

An analysis of the absurdity of Mandle's testimony and the clarity with which it was apparent that she was in fact Manheim's "stooge" necessitates an important aside – Mandle's was not the only compensation evaluated by the Court of Chancery using the same analysis. The Court of Chancery also evaluated the compensation decisions by Manheim for two other fiduciaries of the entity – Frank Manheim (Manheim's brother) and Albert Mezzoroba (Manheim's long-time friend). Despite the close relationship between Manheim and these fiduciaries, using the same thorough analysis of fact and law, the Court of Chancery did not hold Manheim liable for their compensation, instead finding that such compensation was fair and appropriate given the actual roles of each with the entities and their apparent competence.[17]

However, when evaluating Mandle's compensation, a vastly different picture appeared. Whereas Frank Manheim and Albert Mezzoroba provided value and articulated that value at trial, Mandle's testimony confirmed her status as Manheim's "stooge". The Court of Chancery stated:

> Through her testimony at trial, Mandle portrayed herself as an individual so devoid of knowledge about DVRC and the EB-5 Business that her compensation would qualify as corporate

[16] Opinion at 104.
[17] Opinion at 97-102.

> waste. Mandle's testimony bordered on the farcical, to the point where the court must infer that Manheim pays her for reasons unrelated to her ability to act as a member of the WestCo Board and an officer of DVRC. Given Mandle's testimony, Manheim must be paying her to act as a rubber stamp for the self-interested decisions that he makes.
>
> Mandle claimed to have an astounding lack of knowledge about WestCo, DVRC, and her roles. She was able to testify that she and Manheim are friends and that she rejoined the WestCo Board at Manheim's request. Mandle Tr. 722, 733. Other than that, Mandle claimed to know nothing[.]

Opinion at 105.

The Court of Chancery further stated:

> Mandle's testimony paints a stunning picture. She showed up at DVRC about once "every other week," where she has no recollection of doing much of anything. She approved transfers, but she did not know what they were for or why. She thought of her appearances as social visits. Based on her salary of $150,000 per year, she was paid about $5,769 per visit in 2018 and 2019. Adding in her bonus in 2020, she received about $8,654 for each visit in that year. She has no meaningful knowledge of DVRC, its governance structure, or its significant obligations.
>
> It is hard to believe that Mandle actually knows so little about DVRC. Mandle seems to have had a successful career as one of the principals of the Swarthmore Group, where she served as its CEO. Having considered her testimony and demeanor, it seems likely that she played dumb and pretended not to know anything about DVRC because she thought that would be helpful to the defendants and to herself for purposes this litigation. But that behavior itself provides powerful evidence of an illicit and symbiotic relationship between Mandle and Manheim. He pays her to serve his interests in the boardroom, and she continued to play that role on the witness stand. In return, she cashes her checks and ignores her duties.

Opinion at 107-108.

In light of the almost "farcical" testimony by Mandle and her demonstrable lack of actual role, the Court of Chancery's factual determinations leading to the applicability of the entire fairness standard to Mandle's compensation are "sufficiently supported by the record and are the product of an orderly and logical deductive process." *Levitt v. Bouvier*, 287 A.2d 671, 673 (1972); *Smith v. Van Gorkom*, 488 A.2d 858, 871 (1985). The Plaintiffs proved that Manheim paid Mandle as a *quid pro quo* to be his stooge and to that extent Manheim breached his fiduciary duties. Needless to say, and in light of the testimony by Mandle, Manheim would not have been able to meet his burden of proving fairness. Given the testimony, Manheim would also not have been able to prove the propriety of Mandle's compensation under any less onerous standard.

There exists no good reason to reverse the Court of Chancery on this issue and it must be affirmed. The Court of Chancery did precisely what this Court directed in *Nixon v. Blackwell*, by (1) "scrutinizing the fairness" of this symbiotic *quid pro quo* corporate transaction; (2) articulating the "standards which it is applying in its scrutiny of the transactions"; (3) allowing for "flexibility to deal with varying circumstances and issues"; (4) applying a "reasonable, articulable, and articulated" standard; and (5) following a searchingly, "principled and disciplined analysis", plainly delineating and articulating findings of fact and conclusions of law. 626

A.2d 1378 Having done so, this Court can readily understand "without undue difficulty the bases for the trial court's decision." *Id*. The Court of Chancery must be affirmed.

II. THE COURT OF CHANCERY DID NOT COMMIT AN ERROR OF LAW OR FACT BY FINDING THAT BAN HAD NOT HACKED ANY DROPBOX ACCOUNT

A. Questions Presented

Did the Court of Chancery err by determining that Ban never hacked a DropBox account belonging to DVRC, Manheim, or anyone else associated with DVRC and that Ban only accessed materials to which he had access through his personal DropBox account for purposes of determining that Ban did not violate the Computer Fraud and Abuse Act, the Pennsylvania Uniform Trade Secrets Act or convert assets?

B. Scope of Review

This Court reviews the "Court of Chancery's conclusions of law *de novo*," and may set aside factual findings only where "they are clearly wrong and the doing of justice requires their overturn." *DV Realty Advisors LLC v. Policemen's Annuity and Benefit Fund*, 75 A.3d 101, 108 (Del. 2013).

C. Merits of Argument

Ban was, at all times relevant to this case, the beneficial owner of 31.5% of DVRC[18] and was an officer of DVRC, notwithstanding his purported "suspension" by Manheim – the very control person who the Court of Chancery determined had breached his fiduciary duties to DVRC and entered a judgment for such breaches in

[18] Opinion at 31.

the amount of $2,515,809.22. Nevertheless, after years of litigation, four days of trial and copious post-trial briefing, the best that Appellants can do is cite to evidence in the record that supports the Vice Chancellor's finding that Ban had not hacked any DropBox account belonging to any third party or to make reference to facts that are not of record. See, *e.g.*, Appellants Brief, p. 31, which states, without any citation to record evidence that "[t]he Dropbox folders Ban referenced were in a Dropbox account belonging to Manheim in which he maintained personal files and files relating to ReathCo and Penfold").

Instead, the evidence confirms that Ban accessed only his own DropBox account and documents therein. In point of fact, Appellant admits that Ban's access to Ban's DVRC DropBox ". . . was removed and all of the DVRC-related files on his computer were deleted as a result of that access being cancelled." *See* Appellant's Opening Brief, p. 32. Ban, for his part, confirmed that he had been effectively "cut off" from access to both the DVRC DropBox and his company email account. To that point, Ban stated contemporaneously to Bamford that "I have been looking through what I have, but it is very limited due to [Manheim] having cut me off of DVRC Dropbox and my DVRC email."[19] How then could there be a basis for finding that Ban had accessed a DropBox that all parties acknowledge he had no access to?

[19] A208; A210.

The Court of Chancery's factual determination that Ban had accessed only his own personal DropBox account and documents therein is not only supported by the record, including the uncontested testimony of Ban himself that he only ever accessed his own personal DropBox account[20], but doesn't even appear to be a matter of dispute between the parties. As a result, the factual finding is not clearly wrong and the doing of justice does not compel it be overturned. Without the necessary factual predicate of actual access by Ban or some act of hacking, the various statutory claims, as well as conversion, must fail as a matter of law and, of course, that is the natural and correct conclusion reached by the Court of Chancery on these issues. By way of demonstration, the trial court properly did not need to address whether Ban, as the 31.5% owner of the entities at issue (notwithstanding his improper "suspension" as a board member) had actual authority to view records relating to the entities (he did), or whether Ban had the necessary intent required by the relevant statutes (he did not), because the court properly found that Ban had in fact accessed only his own personal systems. The remaining elements of each of the three claims (Computer Fraud and Abuse Act, Pennsylvania Uniform Trade Secrets Act, Conversion) appropriately needed no additional analysis as the necessary

[20] A542 at 269, 22 - 270, 7 ("Q: Did you hack Mr. Manheim's DropBox account at any time" A: No. Only files that I was able to access were things that were still inside my personal DropBox account. . . I didn't make any effort to access anyone else's DropBox account than my own." Q: Did you – have you hacked anybody – have you ever hacked anybody's DropBox account. A. No.)

predicate of each – access – was demonstrated not to have existed. Moreover, Defendants, throughout pre-trial, trial and post-trial – and now on appeal – put the "rabbit in the hat" by assuming, without any support that the self-serving and improper purported "suspension" of Ban as an officer of the subject entities, somehow revoked his rights as an officer and 31.5% owner to at all times access the very documents he is accused of improperly accessing. Needless to say, the Court of Chancery made no such finding and, on a record where the Court of Chancery found that Manheim had breached his fiduciary duties to DVRC and entered a judgment for $2,515,809.22 against Manheim to redress his misdeeds – the very misdeeds Ban worked so hard to uncover and prove – it would visit a great injustice on Ban to hold him responsible for acting in the best interests of the very entities which Manheim had failed for his own benefit. Ban's vindication of DVRC's rights against Manheim's misdeeds were properly rewarded.

Moreover, as discussed in Appellee's Motion to Dismiss Appeal filed contemporaneously, herewith, Manheim is time barred from appealing the rulings made by the Court below. The Court of Chancery published its factual finding immediately post-trial in its Certain Post-Trial Findings of Fact[21], and despite that Appellants did seek reargument of certain of those the factual findings, Appellants did not seek reargument regarding the factual findings relating to the claims against

[21] A573.

Ban. As a result, notwithstanding that the record supports the findings by the Court, Appellants failed to timely contest such findings, which were made more than two years prior to this appeal and confirmed in the Opinion more than fourteen (14) months prior to the appeal. This Court should decline to entertain Appellants' efforts to disturb the well-reasoned and supported factual findings by the Court of Chancery.

CONCLUSION

WHEREFORE, for the foregoing reasons, Young Min Ban respectfully requests that this Court affirm the Court of Chancery's Opinion and Final Judgment.

Respectfully submitted,

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