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IN THE SUPREME COURT OF THE STATE OF DELAWARE

ANDRE HAKKAK, DARIUS MOZAFFARIAN, BARBARA MCKEE, DAVID HACKETT, and HALLE BENETT, Defendants-Below/Appellants, and WHITE OAK HEALTHCARE FINANCE, LLC, WHITE OAK HEALTHCARE FINANCE DIRECT, LLC, WHITE OAK HEALTHCARE MOB, LLC, WHITE OAK H-ALTERNATIVE, LLC, WHITE OAK HEALTHCARE REAL ESTATE SALE-LEASEBACK, LLC, and WHITE OAK REAL ESTATE DEBT, LP, Nominal Defendants-Below/Appellants, v. ISAAC SOLEIMANI and INE SOLEIMANI LP, Plaintiffs-Below/Appellees.	No. 209, 2024 Court Below: Court of Chancery of the State of Delaware C.A. No. 2023-0948-LWW

APPELLANTS' OPENING BRIEF

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Dated: June 26, 2024

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NATURE OF PROCEEDINGS

Defendants-below Appellants appeal from an April 12, 2024 Memorandum Opinion (Exhibit A, the "Opinion" or "Op. __") and a Final Order of the Court of Chancery (Exhibit B) granting Plaintiffs-below Appellees' Motion for Summary Judgment and denying Defendants-below Appellants' Motion for Summary Judgment.

On September 18, 2023, White Oak Global Advisors, LLC ("WOGA") and White Oak Healthcare Finance, LLC ("WOHCF") terminated Appellee Isaac Soleimani's employment with WOHCF for Cause. That same day, the respective Approval Committees of WOHCF and affiliated limited liability companies (together with WOHCF, the "WOHC Entities") removed Soleimani as Manager of the WOHC Entities.

Soleimani's employment was terminated in accordance with his employment term sheet (the "Term Sheet" (A382–A395; A418–A428)), which expressly provided that "[e]ach of WOGA or WOHCF has the right to terminate [Soleimani's] employment ***at any time and for any reason***." (A388 (emphasis added).) The Term Sheet also provided that certain payments relating to a value (to be appraised by a third-party appraiser) of certain Class B interests in the WOHC LLCs would be made if Soleimani's employment was terminated ***without*** Cause, *i.e.*, in respect of a "Specified Termination Event." Under the express terms of the Term Sheet, such

payments would be owing—if at all—only months ***after*** such a termination of employment (and potentially much later). When Soleimani's employment was terminated, no payments respecting a "Specified Termination Event" were made because: (i) Soleimani was terminated ***for Cause***; (ii) even if such payments were owing, Defendants understood their value to be zero; and (iii) even if such payments were owing and had a value greater than zero, they were not then due under the express terms of the Term Sheet. (A421; A423.)

Section 6.1 of the limited liability company agreements of the WOHC Entities (collectively, the "WOHC LLC Agreements") authorized the Approval Committees of those entities to remove Soleimani as Manager once he was removed as an employee of WOHCF. Section 6.1 states in relevant part:

> Mr. Soleimani may be removed by the Company as an employee in accordance with the provisions of the Term Sheet, provided that the Company has satisfied its obligations under the Term Sheet relating to a Specified Termination Event (as defined in the Term Sheet). ***In the event that Mr. Soleimani is so removed as an employee of the Company, he may be removed as a Manager by the Approval Committee*** (excluding for this purpose the Manager).

(A72 § 6.1; A129 § 6.1; A186 § 6.1; A239 § 6.1; A298 § 6.1 (emphasis added).)

On the day of his termination, Soleimani and INE Soleimani LP brought suit in the Court of Chancery under 6 *Del. C.* § 17-110 and 6 *Del. C.* § 18-110, seeking, *inter alia*, declaratory and injunctive relief both (i) to restore Soleimani's employment with WOHCF and (ii) to reinstate him as Manager of WOHCF and the

other WOHC Entities.[1] On December 15, 2023, the parties filed cross-motions for Summary Judgment.

On April 14, 2024, the Court of Chancery issued the Opinion, granting Soleimani's motion and denying Defendants', ruling that "Soleimani's termination as an ***employee*** of the White Oak LLCs is ineffective under the LLC Agreements. He therefore remains Manager of the White Oak LLCs and is entitled to a declaration to that effect under 6 *Del. C.* § 18-110." (Op. 24–25 (emphasis added).) The Court of Chancery acknowledged that under the WOHC LLC Agreements Soleimani "may be removed as manager after he is removed as an employee." (Op. 1.) But it held that Soleimani could not be removed as an ***employee*** until ***after*** the contractual amounts under the Term Sheet respecting a "Specified Termination Event" were paid. The Court of Chancery found that under Section 6.1 of the WOHC LLC Agreements, "Soleimani's removal as an ***employee*** is conditioned upon the satisfaction of the Term Sheet's Specified Termination Event obligations." (Op. 13 (emphasis added).)

The Opinion misconstrued the relevant contracts, leading to several contradictions, including, among others:

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[1] Plaintiffs-below Appellees also sought to reinstate an entity called WORED GP as the General Partner of a WOHCF affiliate called White Oak Real Estate Debt, LP ("WORED"), which was mooted. (A1128.)

First, the Term Sheet expressly states that WOGA and WOHCF had the absolute right to terminate Soleimani's employment (whether for Cause or without Cause) "at any time and for any reason." Yet, to reach its result, the Court of Chancery had to hold that "[h]aving the unlimited right to terminate Soleimani does not, however, mean that the termination is unconditional or immediate." (Op. 16.)

Second, under the Term Sheet, any obligation to pay amounts respecting a Specified Termination Event is triggered ***by*** a termination of employment. But the Court of Chancery held that these amounts had to be paid ***before*** Soleimani could be terminated as an employee, even though Soleimani's right to receive these amounts would only be triggered, if at all, ***after*** his termination. This finding was hopelessly circular.

Third, Section 6.1 of the WOHC LLC Agreements expressly references and incorporates the terms of the Term Sheet respecting termination and any payment obligations relating to a Specified Termination Event. In the first sentence alone, it does so ***three times***. Specifically, Section 6.1 references that Soleimani "may be removed by the Company as an employee ***in accordance with*** the provisions of ***the Term Sheet***" (which provisions include that he may be removed at "any time and for any reason") and the "obligations ***under the Term Sheet*** relating to a Specified Termination Event (***as defined in the Term Sheet)***" (which include that such obligations, if any, are trigged by a termination and only owing after). (A72 § 6.1

(emphasis added).) Yet the Court of Chancery held that if there was any conflict between its interpretation of Section 6.1—which it found to create a condition precedent to removing Soleimani as an employee—and the Term Sheet, Section 6.1 effected a change in the agreed terms that overrode the Term Sheet. (Op. 16–17.)

In addition, even if payment of amounts respecting a Specified Termination Event were some condition precedent to terminating Soleimani's employment (which it was not), such amounts were not owing here because Soleimani was terminated ***for Cause***. The issue of whether Soleimani's termination qualified as a for-Cause termination under the Term Sheet was (and still is) subject to a pending arbitration brought by Soleimani under the rules of the American Arbitration Association. The Opinion, however, erroneously held that obligations respecting a Specified Termination Event attach regardless. (Op. 22.) The Term Sheet clearly distinguishes between amounts owed in a for-Cause termination scenario and a without-Cause "Specified Termination Event." Moreover, whether any relevant amounts are valued above zero is an issue that is subject to an ongoing appraisal process.

As set forth below in greater detail, the Court of Chancery erred both in granting Soleimani's motion for summary judgment, and in denying Defendants' cross-motion, because the unambiguous language of the operative agreements authorized the immediate termination of Soleimani's employment and his removal

as Manager. Alternatively, Defendants respectfully submit that rather than finding that the contractual language unambiguously favored Soleimani's position, the Court of Chancery at most should have found that the contracts were ambiguous and considered the parol evidence submitted below, which strongly favored Defendants' interpretation. Nor should it have granted summary judgment to Soleimani given the factual dispute between the parties regarding whether the relevant amounts payable respecting a Specified Termination Event were greater than zero.

SUMMARY OF ARGUMENT

1. The Court of Chancery incorrectly held that Section 6.1 of the WOHC LLC Agreements requires that Soleimani be paid any amounts owing under the Term Sheet upon a "Specified Termination Event" as a condition precedent to the termination of his employment. Section 6.1 unambiguously creates a promise, not a condition precedent. As a result, any amounts due upon a Specified Termination Event are due after Soleimani's termination, as the plain language of the Term Sheet prescribes, and Soleimani's employment terminated immediately when he was fired. Summary judgment therefore should have been granted to Defendants, not Plaintiffs. At most, the court below should have found Section 6.1 ambiguous, in which case unresolved factual issues regarding the parties' intended meaning of Section 6.1 required denial of Plaintiffs' motion for summary judgment.

2. Because Soleimani's employment was terminated for Cause (A1154 ¶ 32), and because a for-Cause termination does not qualify as a "Specified Termination Event" under the Term Sheet, WOHCF has no "obligations under the Term Sheet relating to a Specified Termination Event" as referenced in Section 6.1 of the WOHC LLC Agreements. Accordingly, even if payment of such obligation was a condition precedent to removal as Manager—and it is not—no such obligation exists. For this legally independent reason, summary judgment should have been granted to Defendants, not Soleimani. Again, at most, the court below should have

found the termination provisions of the Term Sheet to be ambiguous, in which case the unresolved factual issue about the parties' intent on that score required denial of Soleimani's motion for summary judgment.

3. The Court of Chancery erred by granting Plaintiffs' motion for summary judgement because there was a genuine issue of material fact whether the relevant payment obligation referenced in Section 6.1 was greater than zero. If Soleimani's interests for which payments were putatively owing were actually worth zero—and Defendants introduced evidence that they were—any putative condition precedent related to payment of those interests was satisfied.

STATEMENT OF FACTS

A. WOGA Brings on Soleimani to Run a Healthcare-Finance Business

WOGA is an SEC-registered discretionary investment adviser to various investment funds (the "White Oak Funds") and managed accounts (collectively, "White Oak Funds and Managed Accounts"). (A1142 ¶ 3.) WOGA sponsored the creation of the White Oak Funds and serves as their investment adviser pursuant to contractual arrangements with those funds. (A1142 ¶ 3.)

In 2015, WOGA began work to create a sponsored healthcare finance business focused on originating leveraged loans in the healthcare sector, operating as a full-service middle market healthcare lending platform. (A1142 ¶ 4.) WOGA was introduced to Soleimani and began discussions about hiring him to run this business in a WOGA-sponsored entity, a structure it had used successfully in connection with other WOGA-sponsored business lines. (A1143 ¶ 5.) WOGA ultimately hired Soleimani pursuant to an employment Term Sheet. As expressly contemplated in that Term Sheet, WOGA later sponsored the creation of WOHCF as a Delaware limited liability company and installed Soleimani as the Manager of the WOHCF LLC pursuant to the terms of the WOHCF LLC Agreement. (A1143 ¶¶ 6–7.)

Other WOHC Entities were subsequently created to add to the WOHCF business. Soleimani was appointed as the Manager of these other WOHC Entities as well. (A1143 ¶ 8.) Over time, White Oak Funds and Managed Accounts invested

approximately $1.2 billion in capital in WOHCF and the affiliated WOHC Entities. (A1144 ¶ 9.) Soleimani invested no money in the business. (A1144 ¶ 9.)

B. WOGA and Soleimani Negotiate the WOHCF LLC Agreement and the Term Sheet and Subsequent Amendments

1. The Original Term Sheet

In late 2015, WOGA and Soleimani discussed terms and conditions for hiring Soleimani to run the business that would ultimately become WOHCF. (A1144 ¶ 11.) The parties first negotiated the terms of the "White Oak Healthcare Finance, LLC Term Sheet – Employment Terms and Conditions," dated November 25, 2015 (the "Original Term Sheet"). (A382–A395.)

The Original Term Sheet set out the terms and conditions of Soleimani's employment, which was contemplated to be first with WOGA, and then later with WOHCF, once that entity was formed and the business started. Soleimani was identified as "Managing Director, and Head" of WOHCF with "primary leadership and management responsibility for WOHCF." (A382.) The Original Term Sheet also mandated that Soleimani was required to "work[] cooperatively with the other White Oak team members" and that he would continue to owe duties to WOGA, including to take direction from WOGA and comply with WOGA policies. (A382.)

The Original Term Sheet provided Soleimani with a base salary and recited that he was eligible for a discretionary bonus. (A383.) It also set out Soleimani's

entitlement to certain economic rights in WOHCF, defined as "WOHCF Revenue Sharing Interests." (A383.)

The Original Term Sheet expressly provided that Soleimani's employment could be terminated at any time and for any reason, by either White Oak or Soleimani himself:

> Each of WOGA or WOHCF (as applicable) and Employee has the right to terminate Employee's employment ***at any time and for any reason*** (in the case of WOGA or WOHCF (as applicable), WOGA or WOHCF (as applicable) may terminate Employee with or without Cause).

(A388 (emphasis added).) This ensured that White Oak could replace Soleimani at will if it no longer believed that Soleimani's management of the business was in investors' best interests.

Without modifying this right to terminate Soleimani's employment at any time and for any reason, the Original Term Sheet distinguished various termination scenarios for purposes of delineating certain payment obligations *vel non* that might be owing to Soleimani in each:

- By White Oak for Cause, *i.e.*, among other things, upon Soleimani's criminal conviction, fraud or intentional malfeasance against WOHCF or White Oak affiliates and investors, violation of regulatory requirements, or failure to comply with White Oak policies;
- By White Oak without Cause;
- By Soleimani for "Good Reason," *i.e.*, among other things, if White Oak materially diminished Soleimani's responsibilities, began a

competing business, breached the Original Term Sheet, or relocated Soleimani;

- By Soleimani without Good Reason; and
- Upon Soleimani's death or Disability (termination for Disability was contractually deemed to be a "without Cause" termination).

(A385, A388–A389.)

The Original Term Sheet expressly and in detail defined the extent of White Oak's payment obligations in the first two scenarios, *i.e.*, White Oak's termination of Soleimani's employment for Cause and without Cause. These two scenarios were specifically addressed in Clause (A) and Clause (B) on page 8 of the Original Term Sheet:

> (A) If Employee is terminated for Cause, then Employee will be entitled to receive any earned but unpaid Base Salary through the date of termination, and any earned but unpaid Revenue Sharing Interests through the date of termination, but will not be entitled to receive any awarded but unpaid discretionary annual bonus and will, except as otherwise required by law, lose his entitlement to participate in any applicable employee benefits arrangements;
>
> (B) If Employee is terminated without Cause . . . , Employee will be entitled to receive any earned but unpaid Base Salary through the date of termination, any earned but unpaid WOHCF Revenue Sharing Interests and WOAF Economic Interests, through the date of termination, will be entitled to receive any earned or awarded but unpaid discretionary annual bonus, ***Calculated Market Values of his WOHCF Revenue Sharing Interests, WOAF Economic Interests and ownership interests***. . . .

(A389 (emphasis added).) These provisions reflected that if Soleimani's employment was terminated ***for Cause***, he would receive ***nothing*** for the "WOHCF

Revenue Sharing Interests." But if Soleimani's employment was terminated without Cause (including termination upon Disability or if Soleimani terminated his own employment for Good Reason), he would be entitled to the value of those interests (subject to various conditions and payment timetables discussed *infra*). Soleimani also would have such rights if he terminated his own employment without Good Reason—*i.e.*, for any reason—after five years. The Original Term Sheet encompassed these latter scenarios by including them in the definitions that governed the timing and conditions under which Soleimani would be entitled to payments respecting his WOHCF Revenue Sharing Interests upon a termination of employment.

Specifically, the Original Term Sheet defined a "Specified Termination Event" to include these not-for-Cause scenarios:

> The "***Specified Termination Event***" shall mean the occurrence any of the following events: termination of employment by WOHCF or WOGA (other than the termination by WOGA followed by hiring by [WOHCF], as contemplated herein with respect to the initial period) without Cause; termination of employment by the Employee for "Good Reason"; Employee's death, Employee's Disability; or termination by either the Employee or WOHCF after five (5) years from the Start Date for any reason.

(A385.) The Original Term Sheet further provided:

> Upon the occurrence of a Specified Termination Event, Employee shall receive the Calculated [Fair][2] Market Value of his WOHCF Revenue Sharing Interests and WOAF Economic Interests no later than the ***Specified Payment Date***.

(A385 (emphasis added).) There were five salient points embodied in this clause:

First, a potential payment obligation only arises "[u]pon the occurrence of" the Specified Termination Event, *i.e.*, a termination of employment has to first "*occur*."

Second, a potential payment respecting the WOHCF Revenue Sharing Interests is provided for, in contrast to the specific provision excluding such an obligation in a "for Cause" scenario.

Third, the amount of the potential payment obligation is subject to an appraisal process. Specifically, the amount of the potential payment is defined as the "Calculated [Fair] Market Value" of the interests. The Original Term Sheet provides that "Calculated Fair Market Value" means the value of the interests "as determined by a third party appraiser agreed to by Employee and WOHCF, acting reasonably and in good faith." (A385.) Notably, this process assumes that Soleimani is no longer managing WOHCF—*i.e.*, that his employment is

[2] The word "Fair" is omitted in this paragraph, but this appears to be a drafting error. "Calculated Fair Market Value" is defined in the agreement, but there is no defined term "Calculated Market Value."

terminated—so that he would not be on both sides of selecting an appraiser. Moreover, the Original Term Sheet also required the parties to first mediate any dispute—including a dispute about whether such a payment was owing at all—and thereafter arbitrate in an arbitration contemplated to last another 180 days. (A393–A395.)

Fourth, potentially to accommodate any appraisal process (although there were no timing requirements for such in the contract), any potential payment is not due "[u]pon the occurrence of the Specified Termination Event"; rather, payment would fall due on a ***Specified Payment Date*** defined to be "***after***" the Specified Termination Event:

> The "***Specified Payment Date***" shall be defined as, (A) 3 months ***after*** the date of the Specified Termination Date [*sic*], in the event of termination of employment by WOHCF or WOGA (other than the termination by WOGA followed by hiring by WOHCA [*sic*], as contemplated herein with respect to the initial period) without Cause, or termination by Employee for Good Reason; and (B) 6 months ***after*** the date of the Specified Termination Date [*sic*], in the event of death, Disability or termination after 5 years of the Start Date for any reason.[3]

[3] "Specified Termination Date" and "WOHCA" in this paragraph are typographical errors, which should instead read "Specified Termination Event" and "WOHCF," respectively.

(A385 (emphasis added).) This provision makes clear that payment is expressly contemplated to be made "after" the date on which Soleimani's employment is terminated, *i.e.*, the "occurrence" that defines the Specified Termination Event.

In addition to this, the Original Term Sheet made the obligation to pay amounts in respect of a Specified Termination Event subject to a further condition that superseded the foregoing, specifically:

> [P]rior to receiving any consideration for a Liquidity Event or a Specified Termination Event, any debt of WOHCF incurred in the ordinary course and which is outstanding would need to first be paid off . . . .

(A385.) Given that WOHCF is capitalized by billions of dollars in debt extended by White Oak Funds and Managed Accounts and by third-party banks (A1144 ¶ 9), this provision meant that any payments respecting a Specified Termination Event might occur well after the Specified Termination Event. (A1150 ¶ 20.)

2. The Original WOHCF LLC Agreement

In the months that followed, as contemplated in the Original Term Sheet, the parties negotiated the terms of the WOHCF LLC Agreement to create and govern the WOHCF entity.

The basic framework for these contractual arrangements was set out in a June 10, 2016, memorandum titled "WOHCF Basic Considerations" "that was signed off on by White Oak principals and Isaac [Soleimani]." (A1137–A1138, A1140.) That

memorandum reflected the parties' understanding of the recently signed Original Term Sheet and how it would fit into the WOHCF LLC Agreement. As is relevant here, the parties memorialized their understanding that:

> 9. ***Isaac's employment is terminable at will***, t/s [Term Sheet] provides:
>
> - If terminated w/o cause, Isaac's interest in WOHCF is repurchased by WOF at "Net Fair Market Value," subject to true-up
> - ***If terminated for cause, Isaac receives nothing for his interest in WOHCF***
> - If terminated, no ongoing interest in WOHCF
> - There are certain protections and requirements built into the term sheet in termination re: 'without cause' provisions, which mitigate the risk that Isaac would be terminated simply to deny him the value earned by him.

(A1138 (emphasis added).) As to the WOHCF LLC Agreement, the parties set out that they intended an arrangement under which, among other things:

> - "Isaac manages WOHCF under guidance of principal partners of White Oak. . . ."
> - "Principal partners, acting by majority, will have approval rights over certain major decisions such as budget, debt facilities, financing arrangements, capital raising activities."
> - "WOGA as Asset Manager on behalf of the Funds [has] the right to . . . [c]ause a sale of WOHCF. . . ."

(A1137.) The parties ultimately agreed to terms of the WOHCF LLC Agreement that reflected this understanding.

The WOHCF LLC Agreement created a manager-managed LLC, with Soleimani designated as Manager. (A72 § 6.1.) As Manager, Soleimani was authorized to run the day-to-day operations of WOHCF subject to the requirement that certain specified matters—including any actions relating to a potential sale—first be authorized by an "Approval Committee" with a majority of members appointed by WOGA. (A73–A76 § 6.4.)

Class A membership interests were to be granted to the White Oak Funds and Managed Accounts that invested in WOHCF, and WOGA was designated as the Class A Member Representative. (A60–A61 § 3.1(a); A90 § 11.14.) An entity designated by Soleimani (Appellee INE Soleimani LP) was granted Class B interests, *i.e.*, an economic interest in WOHCF as contemplated in the Original Term Sheet. (A51, A54 Article I.)

In addition, the WOHCF LLC Agreement recited certain of the parties' rights under the Original Term Sheet. For example, Section 11.12 stated:

> ***The Term Sheet provides for certain payments to be made under the circumstances described therein*** and such payment provisions are acknowledged as obligations of the Company, which are payable prior to Distributions made to Members. These payments include payment of the "Calculated Fair Market Value" of Isaac Soleimani's "WOHCF Revenue Sharing Interests," to be made to the Class B Member ***upon the termination of employment of Isaac Soleimani as an employee of the Company under certain conditions set forth in the Term Sheet*** . . . . . To the extent that the Term Sheet conflicts with any provision hereof, the provisions hereof shall prevail.

(A90 (emphasis added).) Notably, this clause expressly recites that the payment of any Calculated Fair Market Value of the WOHCF Revenue Sharing Interests was "to be made under the circumstances" described in the Term Sheet. As with Section 6.1, discussed *infra*, this express incorporation and reference to the terms of the Term Sheet in relation to the payment of Revenue Sharing Interests means that, on this point at least, the WOHCF LLC Agreement could not conflict with the Term Sheet. Also importantly, Section 11.12 specifically states that the payment of any such amounts is to be made—if owing—"upon the termination of employment of Isaac Soleimani" under the conditions described in the Term Sheet (discussed *supra*). In other words, a termination potentially triggers payment obligations, not the other way around; payment is not a pre-condition to termination.

Of central relevance to this appeal, Section 6.1 provided that the Approval Committee could remove Soleimani as Manager if he were first removed as an employee under the terms of the Term Sheet, and the Approval Committee could thereafter appoint a new Manager. The relevant text reads in full:

> Mr. Soleimani may be removed by the Company as an employee in accordance with the provisions of the Term Sheet, provided that the Company has satisfied its obligations under the Term Sheet relating to a Specified Termination Event (as defined in the Term Sheet). In the event that Mr. Soleimani is so removed as an employee of the Company, he may be removed as a Manager by the Approval Committee (excluding for this purpose the Manager). Such Approval Committee shall have the right to designate a replacement Manager in

> the event of a resignation or removal of Mr. Soleimani as the Manager in accordance with this Section 6.1.

(A72–A73 § 6.1.) Consistent with WOGA and WOHCF's express right to terminate Soleimani's employment at any time and for any reason, Section 6.1 provided that Soleimani could be removed as Manager immediately thereafter.

Over time, other WOHC Entities were created as affiliates of WOHCF to conduct related business activities, each of which is governed by an LLC Agreement that is functionally identical to the WOHCF LLC Agreement, and which contains language identical to Section 6.1 above. The WOHC LLC Agreements appointed Soleimani as Manager. Soleimani was formally an employee of WOHCF and provided services to the other WOHC Entities via secondment agreements. (A1143 ¶ 7.)

3. The Amended Term Sheet and WOHCF LLC Agreement

In 2020, the parties negotiated certain amendments to the Term Sheet and the WOHC LLC Agreements. (A1151 ¶ 25.) The amendments reflected the fact that the healthcare business then included various entities and business lines in addition to WOHCF and adjusted some of the economics of Soleimani's deal. (A1151 ¶ 25.) The parties' discussions were memorialized in a Memorandum of Understanding (slightly revised over the course of the negotiations) that outlined eight specific business points to be addressed in the amendments. The eight business points

centered on matters bearing on Soleimani's rights respecting profit-sharing distributions and bonus compensation (including adding guaranteed bonus amounts). (A1509–A1511.)

As expressly reflected between the parties at the time of negotiations (*see* A1511), the amendments to the Term Sheet and WOHCF LLC Agreement were not intended to affect any of the parties' other rights and obligations under the original documentation. (A1152 ¶ 28.) Thus, as is relevant here, nothing was intended to affect the parties' prior understanding and agreement that (i) Soleimani's employment was "terminable at will"; and (ii) "if terminated for cause, Isaac receives nothing for his interest in WOHCF." (A1138.)

On or about October 9, 2020, the parties executed an amendment to the WOHCF LLC Agreement and to the Term Sheet (the "Term Sheet Amendment," and together with the Original Term Sheet, the "Term Sheet"). The amendments to the WOHC LLC Agreements did not change any of the relevant language, including Section 6.1 (which remained unchanged from the original WOHCF LLC Agreement).

The Term Sheet Amendment reflected new economics and the fact that Soleimani's economic interests were now spread across several entities, not just WOHCF. So "WOHCF Revenue Sharing Interests" were now "HVE Revenue Sharing Interests," defined to cover all the relevant entities. The definitions of

"Specified Termination Event," "Specified Payment Date," and "Calculated Fair Market Value" remained in all relevant respects the same. (A421 § 3.) Likewise, the parties reiterated that no payment in respect of any Specified Termination Event could be made prior to business debt being first paid off (expressed as the debt of any applicable company, not simply WOHCF). (A421 § 3.)

Clause (A) and Clause (B)—which in the Original Term Sheet set out obligations owing in respect of a termination for Cause and a termination without Cause, respectively (*see supra*)—were replaced with similar provisions reflecting the new structure of "HVE Revenue Sharing Interests" and "Special Payments," and providing for the treatment of the newly-added Guaranteed Bonuses. (A423 § 6.)

As before, the amended Clause A specified what would be owing on a for-Cause termination, and, as before, specifically excluded the Calculated Fair Market Value of Soleimani's (now-defined) HVE Revenue Sharing Interests. (A423 § 6.) The amended Clause B set out what would be owing following a "Specified Termination Event," and included the Calculated Fair Market Value of the HVE Revenue Sharing Interests. (A423 § 6.)

C. WOGA and WOHCF Terminate Soleimani's Employment for Cause, and the Approval Committees of the WOHC LLCs Remove Him as Manager

On September 18, 2023, WOGA and WOHCF terminated Soleimani's employment for Cause, following repeated acts of gross malfeasance. (A1154–

A1156 ¶ 33.) In particular, Soleimani engaged in a wrongful scheme to divert investor value to himself, and in furtherance of that scheme, among other things (i) made fraudulent misrepresentations to investors; (ii) breached confidentiality obligations; (iii) defamed WOGA; (iv) breached White Oak policies; and (v) engineered a sham arbitration to pay unauthorized bonus compensation to senior members of the WOHCF management team who were allied with him. (A1154–A1156 ¶ 33.) After the termination of Soleimani's employment with WOHCF, the Approval Committees of WOHCF and the other WOHC LLCs resolved to remove Soleimani as Manager of those entities and replaced him with Halle Benett.

D. The Court of Chancery Grants Soleimani's Motion for Summary Judgment and Denies Defendants' Cross Motion for Summary Judgment

On September 18, 2023, Soleimani and INE Soleimani, LP brought an action in the Court of Chancery under 6 *Del. C.* § 17-110 and 6 *Del. C.* § 18-110, challenging Soleimani's removal as employee and Manager. (A22–A36.)

On October 17, 2023, Soleimani filed a Statement of Claim with the American Arbitration Association, seeking (i) a declaration that his employment was terminated without Cause; (ii) damages for amounts he claims are owing in respect of a Specified Termination Event under the Term Sheet; and (iii) attorneys' fees and costs. (A1043–A1068.)

On December 15, 2023, the parties to the Court of Chancery Action filed cross-motions for Summary Judgment, and on January 23, 2024, the parties filed briefs in opposition.

On April 12, 2024, the Court of Chancery issued its Opinion, granting Plaintiffs-below Appellees' Motion for Summary Judgment and denying Defendants-below Appellants' Motion for Summary Judgment. (Exhibit A.) The Court of Chancery issued its Final Order and Judgment on the Motions for Summary Judgment on May 15, 2024. (Exhibit B.) This appeal followed.

ARGUMENT

I. THE COURT OF CHANCERY INCORRECTLY HELD THAT PAYMENT OF THE FAIR MARKET VALUE OF SOLEIMANI'S HVE REVENUE SHARING INTERESTS WAS A CONDITION PRECEDENT TO HIS TERMINATION AS AN EMPLOYEE AND REMOVAL AS MANAGER

A. Question Presented

Whether the Court of Chancery erred in granting summary judgment to Soleimani and denying summary judgment to Defendants by interpreting Section 6.1 of the WOHC LLC Agreements as modifying the absolute right of White Oak in the Term Sheet to terminate Soleimani's employment "at any time and for any reason" in order to require that certain payment obligations in the Term Sheet respecting a "Specified Termination Event" be satisfied before any termination of employment became effective and thereby permit Soleimani's removal as Manager. This issue was briefed in the parties' cross-motions for summary judgment (A467–A470; A1106–A1119) and addressed by the Court of Chancery in the Opinion (Op. 11–17, 23–24).

B. Scope Of Review

This Court reviews cross-motions for summary judgment "*de novo* both as to the facts and the law to determine whether or not the undisputed material facts entitle either movant to judgment as a matter of law." *Wilm. Tr., N.A. v. Sun Life Assurance Co. of Can.*, 294 A.3d 1062, 1071 (Del. 2023) (internal quotation marks omitted).

This Court "review[s] questions of law and interpret[s] contracts *de novo*." *Osborn ex rel. Osborn v. Kemp*, 991 A.2d 1153, 1158 (Del. 2010). The question of whether a contract is ambiguous is a question of law, which this Court likewise reviews *de novo*. *BitGo Holdings, Inc. v. Galaxy Dig. Holdings, Ltd.*, __A.3d__, 2024 WL 2313115, at *8 (Del. May 22, 2024).

C. Merits Of Argument

1. Section 6.1 of the WOHC LLC Agreements Unambiguously Embodies a Promise to Pay Specified Termination Event Obligations, Rather than a Condition Precedent

In granting summary judgment to Soleimani and denying summary judgment to Defendants, the Court of Chancery erroneously held that Section 6.1 of the WOHC LLC Agreements requires the WOHC Entities to satisfy certain "Specified Termination Event" obligations under the Term Sheet as a condition precedent to Soleimani's termination as an employee of WOHCF.

The Court of Chancery's reading of Section 6.1 of the WOHC LLC Agreements as creating a condition precedent to the termination of Soleimani's employment results in a three-step procedure to terminate Soleimani's employment with WOHCF and remove him as Manager of the WOHC LLCs. The Opinion describes this three-step procedure as: "First, the Company must satisfy its obligations under the Term Sheet relating to a Specified Termination Event. After doing so, it may remove Soleimani as an employee of the Company. If he is removed

as an employee, he may then be removed as a Manager by the Approval Committee." (Op. 12 (internal quotation marks and footnotes omitted).)

But this reading of Section 6.1 changes the plain meaning of the Term Sheet entirely. The Term Sheet, which is expressly referenced and integrated into the WOHC LLC Agreements, makes explicitly clear that Soleimani can be terminated "at any time and for any reason." The Court of Chancery's interpretation ignores that Section 6.1 itself expressly defines the process of terminating Soleimani's employment in terms of the rights and obligations arising under the Term Sheet. Section 6.1 states:

> Mr. Soleimani may be removed by the Company as an employee ***in accordance with the provisions of the Term Sheet***, provided that the Company has satisfied its ***obligations under the Term Sheet*** relating to a Specified Termination Event (***as defined in the Term Sheet***). In the event that Mr. Soleimani is so removed as an employee of the Company, he may be removed as a Manager by the Approval Committee (excluding for this purpose the Manager).

(A72 § 6.1 (emphasis added).) The first sentence of Section 6.1 addresses termination of Soleimani's employment, while the second sentence addresses Soleimani's removal as Manager. It states that Soleimani can be terminated "in accordance with ***the provisions of the Term Sheet***," and that under some circumstances there will be "obligations ***under the Term Sheet*** relating to a Specified Termination Event (***as defined in the Term Sheet***)." (A72 § 6.1 (emphasis added).) Thus, this first sentence acknowledges that the procedure for terminating

Soleimani's employment is set forth in the Term Sheet. And as the Court of Chancery recognized, the second sentence simply provides that Soleimani "may be removed as manager after he is removed as an employee." (Op. 1.)

But the Term Sheet itself unequivocally states: "WOGA or WOHCF . . . has the right to terminate [Soleimani's] employment at any time and for any reason." (A388.) The Term Sheet also makes clear that any obligation to pay severance is triggered ***by*** a termination of employment, not the other way around. Thus, the various Term Sheet provisions concerning potential severance amounts expressly provide that they are owing (if at all) only after a termination of employment. For example, Section 3 of the Amended Term Sheet states: "***Upon the occurrence*** of a Specified Termination Event"—*i.e.*, once a termination of employment has happened—"Employee shall receive the Calculated Fair Market Value of all his HVE Revenue Sharing Interests no later than the Specified Payment Date." (A421 § 3 (emphasis added).) Section 3 goes on to define the Specified Payment Date, in relevant part, as "6 months ***after*** the date of the Specified Termination Event, in the event of death, Disability or termination after 5 years of the Start Date for any reason." (A421 § 3 (emphasis added).)

Thus, the Term Sheet contemplates that any payments owed in connection with a "Specified Termination Event" are to be paid after—not before—Soleimani's employment is terminated. The WOHC LLC Agreements should not be read to

change this detailed scheme. Indeed, the language of the WOHC LLC Agreements incorporates and refers to the terms of the Term Sheet on this very point. Similarly, Section 11.12 of the WOHC LLC Agreements states:

> The Term Sheet provides for certain payments ***to be made under the circumstances described therein*** . . . These payments include payment of the "Calculated Fair Market Value" of Isaac Soleimani's "WOHCF Revenue Sharing Interests," to be made to the Class B Member ***upon the termination of employment of Isaac Soleimani as an employee of the Company under certain conditions set forth in the Term Sheet***[.]

(A90 § 11.12 (emphasis added).)

Reading the contracts together, Section 6.1 of the WOHC LLC Agreements contemplates termination occurring "in accordance with the provisions of the Term Sheet," and the Term Sheet itself contemplates that payments owing in connection with a Specified Termination Event will be paid only sometime after termination. But the Opinion ignores the Term Sheet, and as a result turns this process on its head, by making Specified Termination Event payments a condition precedent to Soleimani's termination. The Court of Chancery reached this result by finding that use of the terms "provided that" and the present perfect–tense phrase "has satisfied" in the first sentence of Section 6.1 creates a condition precedent. This reading places more weight on these two phrases than they can bear.

Contrary to the Opinion's conclusion, the words "provided that" do not unambiguously signal a condition precedent. "Provided that" has many different

uses in contractual language. Indeed, use of the phrase "provided that" is generally disfavored precisely because it "means too many different things." Bryan A. Garner, GARNER'S DICTIONARY OF LEGAL USAGE 727 (3d ed. 2011). The phrase "may create an exception, a limitation, a condition, or a mere addition." *Id.*; *see also* Antonin Scalia & Bryan A. Garner, READING LAW: THE INTERPRETATION OF LEGAL TEXTS 154 (2012) ("Because of regular abuse of provisos, however, the rule that a proviso introduces a condition has become a feeble presumption. One now often finds provided that introducing not a condition to an authorization or imposition, but an exception to it, or indeed even an addition to it . . . . Because of the variable meaning and variable reach of provisos, they have come to be disfavored by knowledgeable drafters.") (Principle 21 (applicable to all texts)).

Section 6.1 should not be read to create a condition precedent, but rather a promise. "Absent language that clearly indicates an intention either to create a condition or a promise, whether a particular provision is deemed to be a condition as opposed to a promise is to be gleaned from the intent of the parties as determined by considering the contract as a whole." 13 WILLISTON ON CONTRACTS § 38.16 (4th ed. 2010); *see also Thomas v. Headlands Tech. Principal Holdings, L.P.*, 2020 WL 5946962, at *5 (Del. Super. Sept. 22, 2020) (holding that courts must read a contract as a whole when determining whether particular language is a condition). Here, the operative language of Section 6.1 incorporates and refers to the rights and definitions

of the Term Sheet—three times in the first sentence. It thereby acknowledges and reflects—rather than eviscerates and rewrites—the terms of the Term Sheet.

Moreover, the Court of Chancery's reading is internally inconsistent and circular—a payment of amounts owing upon a Specified Termination event would have to come ***before*** a termination, but the obligation to make that payment—and a determination of the amount to be paid—would only be triggered ***after***. "It is obvious that a performance due by the terms of a contract at a later day can hardly be intended by the parties to be a condition precedent to a duty of earlier performance . . . ." 13 WILLISTON ON CONTRACTS § 38.16.

Furthermore, the Chancery Court's interpretation yields absurd results, which are avoided by reading Section 6.1 as embodying a promise rather than a condition precedent. "When the intent of the parties is doubtful or when a condition would impose an absurd or impossible result, then the agreement will be interpreted as creating a promise rather than a condition." 13 WILLISTON ON CONTRACTS § 38.13. And more generally, in construing contracts, "[a]n unreasonable interpretation produces an absurd result or one that no reasonable person would have accepted when entering the contract." *Osborn*, 991 A.2d at 1160. Reasonable rather than unreasonable interpretations are favored by law. "If one interpretation would lead to an absurd conclusion, then such interpretation should be abandoned and the one

adopted which would accord with reason and probability." *See id.* at 1160 n.21 (quoting cases).

While the Opinion acknowledges that the "White Oak LLCs can terminate Soleimani's employment at any time for any reason (and they have)," it then states: "The process of effecting his termination remains ongoing." (Op. 17.) Under the Opinion's logic, this "process of effecting [Soleimani's] termination" must remain ongoing for the many months that it will take for an appraisal process to determine the "Calculated Fair Market Value" of Soleimani's "HVE Revenue Sharing Interests." This result is absurd enough in the present circumstance, where Soleimani has been terminated for Cause for placing his own interests ahead of the company's. But even more absurdly, this same result would obtain even if Soleimani had been terminated as a result of permanent Disability that rendered him unable to perform his job, or even if terminated for Cause in respect of blatant criminal activity.

This result is also contrary to the general abhorrence of the common law to the specific enforcement of employment contracts, which is expressly codified in California law, which governs the Term Sheet. *See* Cal. Civ. Code § 3390 ("The following obligations cannot be specifically enforced: (a) [a]n obligation to render personal service[;] (b) [a]n obligation to employ another in personal service.").

In addition, because the Term Sheet also provides that "***prior to*** receiving any consideration for a Company Sale or a Specified Termination Event, any debt of the applicable HVE incurred in the ordinary course and which is outstanding would need to first be paid off" (A421 (emphasis added)), Soleimani could potentially remain ***indefinitely*** as an employee and Manager, or could forestall the WOHC LLCs from extinguishing those debts, thereby blocking his removal. The Opinion suggests that these results "are not necessarily absurd," because "[p]erpetual managers are allowed under the Delaware Limited Liability Company Act." (Op. 23 n.96.) But the Opinion does not attempt to square a perpetual-manager or perpetual-employee result with the Term Sheet—which allows for the termination of Soleimani's employment "at any time and for any reason."

None of this is consistent with the parties' plain intent, let alone with the express terms of the Term Sheet invoked by Section 6.1, which—again—provide that White Oak be able to terminate Soleimani's employment "at any time and for any reason." The Term Sheet and the WOHCF LLC Agreement are an integrated arrangement: The Term Sheet references the WOHCF LLC Agreement and Section 11.12 of the WOHCF LLC Agreement provides that the "[LLC] Agreement [and] the Term Sheet (if applicable) . . . constitute the entire agreement among the parties hereto with respect to the subject matter hereof[.]" (A90 § 11.12.) Notwithstanding this integrated arrangement, the Opinion reads the words "provided that" and "has

satisfied" in Section 6.1 of the WOHC LLC Agreements in a manner that eviscerates and entirely rewrites the employment-termination procedures set forth in the Term Sheet, even though Section 6.1 itself expressly incorporates the Term Sheet.

The Court of Chancery should have denied Soleimani's motion for summary judgment on this basis and granted Defendants' instead.

2. In the Alternative, the Court of Chancery Should Have Found Section 6.1 of the WOHC LLC Agreements Ambiguous and Considered Parol Evidence

Rather than conclude that Section 6.1 entirely removed White Oak's right under the Term Sheet to terminate Soleimani at any time and for any reason, the Court of Chancery, at most, should have found Section 6.1 ambiguous. An unambiguous provision is one that is "reasonably susceptible of *only one* interpretation." *BitGo Holdings*, 2024 WL 2313115, at *8 (quoting *Rhone-Poulenc Basic Chems. Co. v. Am. Motorists Ins. Co.*, 616 A.2d 1192, 1196 (Del. 1992)). However, "[i]f the words of the agreement can only be known through an appreciation of the context and circumstances in which they were used at the time of drafting, then the language is ambiguous, such that a court is not free to disregard extrinsic evidence of what the parties intended." *Id.* (internal quotation marks omitted).

If there were any ambiguity in Section 6.1, it should have been resolved in Defendants' favor based on the parol evidence introduced in the Court of Chancery.

As described *supra*, during the negotiation of the WOHCF LLC Agreement, the parties were guided by a "Basic Considerations" document that set out their agreement and understanding as to the basic structure of the business. That document stated: "Isaac's employment is terminable at will[.]" (A1138.) In other words, when negotiating the WOHCF LLC Agreement, the parties understood that they were preserving—not modifying—the termination right embodied in the Term Sheet. At the very least, this parol evidence created a genuine issue of material fact that required denial of Soleimani's motion for summary judgment. *BitGo Holdings*, 2024 WL 2313115, at *8.

II. THE COURT OF CHANCERY INCORRECTLY HELD THAT SOLEIMANI WAS ENTITLED TO BE PAID THE FAIR MARKET VALUE OF HIS HVE REVENUE SHARING INTERESTS UPON A TERMINATION FOR CAUSE

A. Question Presented

Whether the Court of Chancery erred by interpreting the Term Sheet to require the payment of amounts respecting the HVE Revenue Sharing Interests in the event of a for-Cause termination. This issue was briefed in the parties' cross-motions for summary judgment (A470–A475; A1119–A1126) and addressed by the Court of Chancery in the Opinion (Op. 17–22).

B. Scope Of Review

This Court reviews cross-motions for summary judgment "*de novo* both as to the facts and the law to determine whether or not the undisputed material facts entitle either movant to judgment as a matter of law." *Wilm. Tr.*, 294 A.3d at 1071 (internal quotation marks omitted). This Court "review[s] questions of law and interpret[s] contracts *de novo*." *Osborn*, 991 A.2d at 1158. The question of whether a contract is ambiguous is a question of law, which this Court likewise reviews *de novo*. *BitGo Holdings*, 2024 WL 2313115, at *8.

C. Merits Of Argument

1. The Term Sheet Unambiguously Distinguishes For-Cause Terminations from Specified Termination Events

Because Soleimani's employment was terminated for Cause (A1154 ¶ 32), WOHCF has no "obligations under the Term Sheet relating to a Specified Termination Event," as referenced in Section 6.1. Accordingly, even if payment of such obligation were a condition precedent to removal as Manager—and it is not, *see supra*—none exist. For this legally independent reason, the Court of Chancery should have denied Soleimani's motion for summary judgment and granted Defendants' motion instead. But the Court of Chancery erroneously held that Soleimani's termination, even if for Cause, constituted a "Specified Termination Event" and created a payment obligation that could form a condition precedent based on the Court of Chancery's reading of Section 6.1.

The Court of Chancery found that because Soleimani was terminated more than five years after the "Start Date" of his Term Sheet, his termination constitutes a Specified Termination Event entitling him to a pay-out of his HVE Revenue Sharing Interests. (Op. 17–22.) This conclusion, however, required reading the definition of a "Specified Termination Event," which includes "termination by either the Employee or WOHCF after five (5) years from the Start Date for any reason," without situating that definition within the broader context of the Term Sheet.

"[T]he meaning which arises from a particular portion of an agreement cannot control the meaning of the entire agreement where such inference runs counter to the agreement's overall scheme or plan." *E.I. du Pont de Nemours & Co. v. Shell Oil Co.*, 498 A.2d 1108, 1113 (Del. 1985).

Reading the Term Sheet as a whole makes clear that the parties intended to distinguish between what would be owed to Soleimani in a "for Cause" termination, on the one hand, and upon the occurrence of a "Specified Termination Event," on the other hand. The parties took pains to distinguish these scenarios across two highly detailed clauses. Specifically, Clause (A) clearly spells out that Soleimani has limited rights in respect of a for-Cause termination that do ***not*** include the Calculated Fair Market Value of his HVE Revenue Sharing Interests. Clause (B) states that Soleimani would be entitled to such payments (provided all the preconditions to payment were met) in respect of a Specified Termination Event. Clause (A) and Clause (B) thus place a "for Cause" termination in direct contraposition to a "Specified Termination Event"—those two events are contractually distinct.

The Court of Chancery relied on language in the definition of "Specified Termination Event" that included "termination by either the Employee or WOHCF after five (5) years from the Start Date for any reason." It interpreted the phrase "for any reason" to include a for-Cause termination if occurring after five years.

But the Court of Chancery's interpretation failed to give effect to the highly specific payment provisions of Clause (A) and Clause (B), which created a dichotomy between a for-Cause termination (with certain limited payment obligations) and a Specified Termination Event (with substantially greater payment obligations). The Term Sheet thus treats these two concepts as distinct, and specifically details the payment obligations that follow in each scenario. "Specific language in a contract controls over general language, and where specific and general provisions conflict, the specific provision ordinarily qualifies the meaning of the general one." *DCV Holdings, Inc. v. ConAgra, Inc*., 889 A.2d 954, 961 (Del. 2005); *see also Sonitrol Holding Co. v. Marceau Investissements*, 607 A.2d 1177, 1184 (Del. 1992) ("[W]here there is inconsistency between general provisions and specific provisions, the specific provisions ordinarily qualify the meaning of the general provisions."); 11 WILLISTON ON CONTRACTS § 32:10 ("When general and specific clauses conflict, the specific clause governs the meaning of the contract.").

When the definition of Specified Termination Event is read in this full context, the phrase "for any reason" respecting an after-five-years termination is used to denote that a Specified Termination Event occurs when ***either*** the Employee ***or*** WOHCF terminates without a qualifying reason, whereas prior to the five-year period elapsing, a termination by the Employee had to be for "Good Reason" to so qualify and ***only*** a termination by WOHCF without Cause constitutes a Specified

Termination Event. "In upholding the intentions of the parties, a court must construe the agreement as a whole, giving effect to all provisions therein." *E.I. du Pont de Nemours & Co.*, 498 A.2d at 1113. "[T]he meaning which arises from a particular portion of an agreement cannot control the meaning of the entire agreement where such inference runs counter to the agreement's overall scheme or plan." *Id*. "[A] court interpreting any contractual provision . . . must give effect to all terms of the instrument, must read the instrument as a whole, and, if possible, reconcile all the provisions of the instrument." *Elliott Assocs., L.P. v. Avatex Corp*., 715 A.2d 843, 854 (Del. 1998). This also makes sense of the parties' clear intention in Clause (A)—and the entirely common-sense result—that if Soleimani committed serious malfeasance, he would not be entitled to a full pay-out from the very investors whom he had harmed.

2. In the Alternative, the Court of Chancery Should Have Found the Term Sheet Ambiguous and Considered Parol Evidence

Even if the definition of Specified Termination Event were in tension with Clause (A) and Clause (B), the Term Sheet was at most ambiguous. A provision of a contract is unambiguous if it is "reasonably susceptible of *only one* interpretation." *BitGo Holdings*, 2024 WL 2313115, at *8 (quoting *Rhone-Poulenc*, 616 A.2d at 1196). However, "[i]f the words of the agreement can only be known through an appreciation of the context and circumstances in which they were used at the time

of drafting, then the language is ambiguous, such that a court is not free to disregard extrinsic evidence of what the parties intended." *BitGo Holdings*, 2024 WL 2313115, at *8 (internal quotation marks omitted).

Here, any ambiguity should have been resolved in Defendants' favor based on the parol evidence that was before the Court of Chancery. Specifically, as described *supra*, shortly after the Original Term Sheet was executed and during the negotiations of the original WOHCF LLC Agreement that was to complete their contractual arrangements, the parties memorialized their understanding of their intent and business purposes, as well as their understanding of what the Original Term Sheet already provided. Among other things, in a June 7, 2016, document titled "WOHCF Basic Considerations" "that was signed off on by White Oak principals and Isaac [Soleimani]," (A1140), the parties reflected their understanding that:

> Isaac's employment is terminable at will, t/s [Term Sheet] provides . . . ***If terminated for cause, Isaac receives nothing for his interest in WOHCF[.]***

(A1138 (emphasis added).) At the very least, this parol evidence created a genuine issue of material fact that required denial of Soleimani's motion for summary judgment. *GMG Cap. Invs., LLC v. Athenian Venture Partners I, L.P.*, 36 A.3d 776, 784 (Del. 2012) ("[S]ummary judgment may not be awarded if the language is

ambiguous and the moving party has failed to offer uncontested evidence as to the proper interpretation.”).

III. THE COURT OF CHANCERY DID NOT CONSIDER EVIDENCE THAT SOLEIMANI'S HVE REVENUE SHARING INTERESTS WERE WORTH ZERO

A. Question Presented

Whether the Court of Chancery erred by granting Plaintiffs' motion for summary judgment, notwithstanding that Defendants introduced evidence that Soleimani's HVE Revenue Sharing Interests were worth zero, such that any putative condition precedent related to payment of those interests was satisfied. This issue was briefed in the parties' cross-motions for summary judgment (A462; A1126) and addressed by the Court of Chancery in the Opinion (Op. 22 n.94).

B. Scope of Review

A decision on cross-motions for summary judgment is reviewed "*de novo* both as to the facts and the law to determine whether or not the undisputed material facts entitle either movant to judgment as a matter of law." *Wilm. Tr.*, 294 A.3d at 1071 (internal quotation marks omitted).

C. Merits of Argument

Defendants introduced evidence below that Soleimani's HVE Revenue Sharing Interests were worth zero. This evidence included an affidavit from WOGA's President, who detailed various relevant valuations that White Oak received near in time to Soleimani's termination, which suggested that the value of the relevant interests was zero. (A1156–A1157 ¶ 36.) Thus, even if payout of those

interests were a condition precedent to terminating Soleimani's employment and removing him as Manager (which it was not), there would have been no obligations owing at the time of his termination and removal. As a result, any condition precedent related to payment would have been satisfied.

In resolving a party's motion for summary judgment, a court must consider "whether the evidence, when viewed in the light most favorable to the nonmoving party, presents any dispute of material fact." *Telxon Corp. v. Meyerson*, 802 A.2d 257, 262 (Del. 2002). Because the Court of Chancery concluded that a payout of Soleimani's HVE Revenue Sharing Interests was a condition precedent to his termination (which it was not), whether those interests were worth more than zero was a crucial fact (based on the Court of Chancery's logic) to determining whether the putative condition precedent was satisfied. But rather than consider Defendants' zero-value evidence in the light most favorable to Defendants as the non-moving party, the court below improperly granted summary judgment to Soleimani.

The Court of Chancery simply side-stepped the factual dispute. Addressing the argument in a footnote to the Opinion, the Court of Chancery stated: "Any disagreements about the value of these revenue sharing interests and the parties' obligations under the Term Sheet are, however, subject to an arbitration provision and are not before me." (Op. 22 n.94.) Although that factual dispute is being resolved by a different process, it is a factual dispute nonetheless and precluded the

grant of summary judgment in favor of Soleimani. "If a court determines that it does not have sufficient facts to enable it to apply the law to the facts before it, then summary judgment is inappropriate." *Motorola, Inc. v. Amkor Tech., Inc.*, 849 A.2d 931, 935 (Del. 2004). By seeking to avoid this factual dispute, the Court of Chancery effectively acknowledged that it did not have a sufficiently developed factual record. A grant of summary judgment in favor of Plaintiffs was therefore improper.

CONCLUSION

For the foregoing reasons, the Judgment should be reversed and judgment granted in favor of Appellants. In the alternative, the Judgment should be reversed and the matter returned to the Court of Chancery for further proceedings regarding the parties' intent in executing the WOHC LLC Agreements and the Term Sheet.

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