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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 HEATHCARE MOB, LLC, WHITE OAK H-ALTERNATIVE REAL ESTATE SALE-LEASEBACK, LLC, and WHITE OAK REAL ESTATE DEBT, LP, Nominal Defendants-Below/Appellants, v. ISSAC 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

APPELLEES' ANSWERING BRIEF

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NATURE OF PROCEEDINGS[1]

This is an appeal from the well-reasoned Opinion and Order of the Court of Chancery granting summary judgment in favor of Plaintiffs Below/Appellees Isaac Soleimani and INE Soleimani LP ("Appellees"). In the Opinion, the Court of Chancery confirmed that Appellants' purported termination of Soleimani as an employee and Manager of the White Oak LLCs is ineffective under the LLC Agreements for failure to satisfy a condition precedent. The Court of Chancery's Order confirmed that Appellants' actions were invalid, and that Soleimani remains an employee and Manager of the White Oak LLCs.

The primary issues on appeal are straight-forward, narrow questions of contract construction: was Appellants' purported termination of Soleimani effective to remove him as an employee and Manager of the WOHC Entities without having satisfied their obligation to pay him the fair market value of his equity stake? As Vice Chancellor Will correctly ruled, the unambiguous provisions of the operative LLC Agreements and Term Sheet demonstrate it was not. In the face of unambiguous contractual language and a well-reasoned opinion applying it, Appellants are left with completely meritless positions.

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[1] The trial court's Memorandum Opinion (Exhibit A to Appellants' Opening Brief) is referred to herein as the "Opinion". Appellants' Opening Brief is cited as "OB." All capitalized terms have the meaning assigned in the Opinion unless otherwise defined.

The Court of Chancery found that (i) Section 6.1 of the LLC Agreement's proviso (the "Proviso") that Soleimani may be terminated "***provided that*** the Company ***has satisfied*** its obligations under the Term Sheet relating to a Specified Termination Event" (emphasis added) means that termination only becomes effective when the Company has paid Soleimani in connection with a Specified Termination Event, and that (ii) Mr. Soleimani's termination, purportedly and disputably for Cause, triggers such payment obligations because it falls within the definition of "Specified Termination Event," which covers a termination by "WOHCF after five (5) years from the Start Date for ***any reason***" (emphasis added).

Appellants, by contrast, argue that the words "provided that the Company has satisfied its obligations" does not require the Company to pay Soleimani the value of his equity before termination is effective, but rather is a "promise" of a future payment that "acknowledges" the terms of the Term Sheet. Appellants further argue that a termination for "any reason" means any reason ***except*** Cause.

Appellants' positions are untenable. For instance, Appellants argue that the phrase "for any reason" means two different things in the Term Sheet, depending upon the preferred result they are seeking. On the one hand, Appellants assert that their purported "for-Cause" removal of Soleimani was effective in the termination provision because the Term Sheet permits WOHCF "to terminate Employee's employment at any time and ***for any reason*** (in the case of … WOHCF[,] …

WOHCF (as applicable) may terminate Employee ***with or without Cause***)." (emphasis added). On the other hand, with respect to WOHCF's obligation to pay Soleimani in connection with a Specified Termination Event, Appellants argue that the same phrase—"for any reason"—used in the same context concerning termination, does not include a "for Cause" termination, despite a parenthetical in the termination provision of the Term Sheet that makes clear the phrase encompasses "with or without Cause."

Appellants further their baseless argument that a "for-Cause" termination does not trigger a Specified Termination Event Obligation after five years because the Term Sheet purportedly distinguishes between what obligations would be paid to Soleimani under a "for-Cause" termination compared to a termination "due to a Specified Termination Event," which they assert are mutually exclusive. But Appellants' assertion requires the Court to ignore the Term Sheet's explicit provision addressing the payments owed to Soleimani in connection with "a Specified Termination Event that is … by WOHCF for Cause"—a circumstance Appellants claim is impossible under the Term Sheet. Appellants' arguments require the application of malleable definitions of the same phrase in the same context and ignoring explicit terms that are inconvenient. Vice Chancellor Will correctly rejected Appellants' flexible reading of the unambiguous contracts.

Appellants advance a similarly makeweight argument that the Proviso in Section 6.1 of the LLC Agreements does not make satisfaction of the WOHC Entities' Specified Termination Event Obligations a condition precedent to Soleimani's removal. Relying solely on a cite from a treatise, Appellants contend that "provided that" does not create a condition precedent. But Appellants conveniently ignore the rest of the provision. Specifically, the phrase "provided that" is modified by the present perfect tense—"has satisfied"—to make clear that the WOHC Entities must have completed the act of satisfying the Specified Termination Event Obligations before Soleimani may be removed. Unable to address that fact, Appellants argue that the Proviso is nothing more than a promise and meaningless acknowledgment of obligations that may or may not exist under the Term Sheet. Vice Chancellor Will correctly rejected these frivolous arguments.

In light of the import of the clear contractual language and the force of the Court of Chancery's reasoning, Appellants argue for the first time on appeal that the relevant agreements are ambiguous. This Court should not even consider this argument as it was not preserved. Rather, Appellants argued below that "The unambiguous language of [the LLC Agreements and the Term Sheet] authorized Soleimani's removal as employee and Manager, and [Appellants'] Motion for Summary Judgment should be granted." (A1082; *see also* A1106). And, at oral argument Appellants conceded that the Term Sheet is unambiguous. (B119; B126).

Moreover, though the contracts are clear, if extrinsic evidence were considered, there is no disputed issue of fact that it supports Appellees' interpretation of the parties' intent. Appellants merely offer irrelevant extrinsic "evidence" that is contradicted by both the contractual plain language and the drafting history of the Term Sheet and the LLC Agreements. The drafting history of the amendment to the Term Sheet demonstrates that Appellants attempted to revise the definition of Specified Termination Event to exclude all "for Cause" terminations, including those that occur more than five years after the Start Date, from the definition of Specified Termination Event. Soleimani rejected such change and Appellants conceded the point, leaving unchanged the "For Any Reason" clause in the Term Sheet. Likewise, the drafting history of the LLC Agreements demonstrates that Soleimani inserted the Proviso in Section 6.1 so that he could not be removed as an employee or Manager unless and until the WOHC Entities paid him for his equity interest as part of their Specified Termination Event Obligations.

On appeal, Appellants also assert that the Chancery Court erred in not crediting their argument that they have no Specified Termination Event Obligations based on their bald assertion that the value of the "HVE Revenue Sharing Interests" to be paid upon a Specified Termination Event (16.785% of the equity value of the WOHC Entities) is zero, and this creates an issue of fact precluding summary judgment. Appellants are doubly wrong. *First*, as Vice Chancellor Will correctly

concluded, the value of Soleimani's interests was not before her, but rather the parties agreed that the value of those interests was to be "determined by a third party appraiser agreed to by Employee and WOHCF" and subject to an arbitration provision. *Second,* Appellants have it backward. Appellants could only potentially win on this issue if there were no disputed issue of fact that the interests were valueless. If there is ***any*** value at all, it had not been paid to Soleimani, meaning that the condition precedent to his removal was not satisfied and he is entitled to summary judgment. Here, Appellees adduced competent evidence that Soleimani's HVE Revenue Sharing Interests had positive value worth potentially in excess of $100 million, introducing third party valuations of WOHCF of $650-$850 million, an offer to buy WOHCF for $300 million and a valuation of WOHCF commissioned by Appellants of $225-$290 million. And, Appellants obstructed the determination of the value of Soleimani's interests, having refused to participate in the contractually-mandated appraisal unambiguously required upon Soleimani's termination. There is no genuine issue of disputed fact that the value of the Specified Termination Event Obligations is zero and that Appellants, therefore, had no obligation to satisfy.

The Court of Chancery's Opinion should be affirmed.

SUMMARY OF ARGUMENT

1. The Court of Chancery correctly concluded that Section 6.1 of the WOHC LLC Agreements unambiguously establishes an order of operations that Soleimani could only be removed as an employee and then Manager of such entity "provided that the [WOHC Entity] has satisfied its obligations under the Term Sheet relating to a Specified Termination Event." The Proviso's requirement that the WOHC Entity's removal of him as employee and then Manager was only effective "provided that the [WOHC Entity] ***has satisfied***" its Specified Termination Event Obligations unambiguously establishes the payment of such obligations as a condition precent to his removal. Appellants also failed to preserve their argument that Section 6.1 of the WOHC LLC Agreements is ambiguous, but if parol evidence is considered, there is no genuine issue of fact that it supports Appellees' interpretation.

2. The Court of Chancery correctly concluded that Appellees' purported termination of Soleimani for Cause under the Term Sheet constituted a Specified Termination Event triggering certain payment obligations under the unambiguous definition in the Term Sheet. The Term Sheet states that a "*Specified Termination Event*" "shall mean … ***termination by*** either the Employee or ***WOHCF*** after five (5) years from the Start Date ***for any reason***." (A872). Because the Start Date was "[n]o later than December 31, 2015," and Soleimani's employment was "purportedly

terminated by the Approval Committee on September 18, 2023—for a reason" (Opinion, 18 n.82), Soleimani's purported for-Cause termination unambiguously qualifies as a "Specified Termination Event" under the Term Sheet. Appellants also failed to preserve their argument that the Term Sheet was ambiguous, but if parol evidence is considered, there is no genuine issue of fact that it supports Appellees' interpretation.

3. The Court of Chancery correctly concluded that it need not determine the value of the Specified Termination Event Obligations because such determination was subject to an appraisal process and covered by an arbitration provision. In any event, Appellants are incorrect that their assertion that the Specified Termination Event Obligations have a value of zero precludes summary judgment in Appellees' favor. If there is ***any*** value at all to the Specified Termination Event Obligations, it is undisputed that Appellants did not pay it, so the condition precedent to Soleimani's termination has not been "satisfied" as required. Here, (i) Appellees adduced evidence that Soleimani's HVE Revenue Sharing Interests may be worth in excess of $100 million dollars and (ii) Appellants wrongfully refused to engage in an appraisal process to determine such value. There is no error in finding that the Specified Termination Event Obligations had a non-zero value that was not satisfied as required for Appellants to terminate Soleimani.

COUNTERSTATEMENT OF FACTS

A. The Origins And Business Of White Oak Healthcare, Its Relationship With WOGA, And Governance Structure

In late 2015, Andre Hakkak contacted Soleimani, who had recently sold his previous healthcare lending platform, and proposed to partner with him to establish a new lending platform. Hakkak represented to Soleimani that he had discretionary access to investor funds managed by WOGA (the "Fund Investors") that could provide the necessary capital to launch Soleimani's new entity. (A1572 ¶5). Soleimani's condition for agreeing were: (1) Soleimani would have an 18% ownership stake in the new entity; (2) his equity stake would have a liquidity provision after 5 years; and (3) Soleimani would control the management of the new entity with the broad powers necessary to create equity value for himself and the Fund Investors. (*Id*.). Hakkak agreed and the parties spent nearly six months negotiating the framework for the business, incorporating Soleimani's conditions. (*Id*.).

WOHCF was founded in August 2016 to originate leveraged loans in the healthcare sector. (A1142 ¶4; A1145 ¶13). The framework for the business consisted of the Initial Term Sheet and the WOHCF LLC Agreement. The Initial Term Sheet provided Soleimani an 18% revenue sharing interest (A495) and required that Soleimani be paid the fair market value of that interest upon the occurrence of a Specified Termination Event, which included his termination after

five years "for any reason." (A497). This ensured that if Soleimani dedicated five or more years to developing the business, he would have a fully-vested equity interest in the business that he built that could not be taken away.

The WOHCF LLC Agreement designated Soleimani as Manager of WOHCF and granted him broad authority, subject only to limited consent rights of the Approval Committee, controlled by WOGA through the Approval Committee Appellants. (A530-A584). Soleimani's 18% revenue sharing interest was reflected in the WOHCF LLC Agreement in the form of Class B units representing an 18% equity interest in WOHCF, with the Fund Investors owning the remaining 82% through Class A Units. (A494). To ensure that he would remain in a position to protect his equity interest in the event of a Specified Termination Event, Section 6.1 of the WOHCF LLC Agreement precluded his removal as both an employee and Manager unless and until he had received fair market value for it. Soleimani's and Fund Investors' equity positions were later diluted proportionally as Soleimani engaged a management team and now stand at 76.465% Fund Investors, 16.785% Soleimani, and 6.75% management team. (A581; A637; A694; A749; A806; A863). Over time, four additional WOHC Entities were formed to conduct the business, each of which replicated the governance and equity structure of WOHCF. (A530-A867).

B. Relevant Provisions Of The Governing Agreements And Term Sheet

1. The Governing Agreements

The Governing Agreements of the WOHC Entities, WOHCF (A530-A584), WOHCFD (A586-A641), WOHCMOB (A643-A698), WOHA (A700-A753), WOHCRE (A755-A810) and WORED (A812-A867), are substantially identical.

Section 6.1 of the LLC Agreements designates Soleimani as the Manager. (A560-61; A617; A674; A727; A786; A843 §6.1). It also addresses the circumstances under which Soleimani may be removed as Manager. It provides in relevant part:

> Mr. Soleimani may be removed by the [WOHC Entity] as an employee in accordance with the provisions of the Term Sheet, ***provided that the [WOHC Entity] 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 [WOHC Entity]***, he may be removed as a Manager by the Approval Committee (excluding for this purpose the Manager).

(*Id.* §6.1 (emphasis added)).

Thus, Section 6.1 establishes an order of operations that must be followed in order to remove Soleimani as Manager. ***First***, the WOHC Entity, at the direction of the Approval Committee, must satisfy its obligations under the Term Sheet relating to a Specified Termination Event, including paying Soleimani fair market value of his equity interest in the WOHC Entities. ***Second***, once it has satisfied those

obligations, the WOHC Entity, at the direction of the Approval Committee, may remove Soleimani as an employee. ***Finally***, once Soleimani is "so removed as an employee of the [WOHC Entity], he may be removed as a Manager by the Approval Committee." (A28 ¶19); (A560; A617; A674; A727; A786; A843 §6.1); (Opinion, 1, 12).[2]

The parties' negotiating history of Section 6.1 clearly demonstrates that the parties understood that the Proviso established WOHCF's payment to Soleimani as a condition precedent to Soleimani's removal as an employee and Manager under the LLC Agreements. Initially, Soleimani proposed that he could not be removed as Manager "except by his own voluntary resignation." (A1575 ¶12; A1605-06 §6.1). In response, WOGA's counsel proposed a significantly revised Section 6.1 that offered no protections to Soleimani. WOGA's proposal provided: "Holders of a majority of the Percentage Interests of the Class A Interests shall have the right to designate a replacement Manager at any time." (A1575-76 ¶13; A1650-51 §6.1). Because the WOGA managed and directed funds holding a majority of the Percentage of Class A Interests, this proposed version of Section 6.1, would have

[2] Section 6.1 of the LP Agreement is substantively identical to Section 6.1 of the LLC Agreements, except Soleimani is an employee of WORED and WORED GP is the General Partner. (*See* A843 §6.1). Accordingly, before WORED can remove Soleimani as an employee, it must satisfy its obligations under the Term Sheet relating to a Specified Termination Event. (A29 ¶21).

provided WOGA the ability to remove Soleimani as Manager at any time. Soleimani rejected that proposal, insisting on limiting WOGA's ability to remove him as Manager.

Accordingly, during negotiations, Soleimani inserted additional protections, including the Proviso. Initially, he reimposed the limitation that he could not be removed as Manager until he was no longer an employee. (A1576-77 ¶14; A1688 §6.1). Soleimani subsequently augmented that protection to provide that Soleimani could not be removed as a Manager until he had been "removed by the Company as an employee in accordance with the provisions of the Term Sheet." (A1576-77 ¶14; A1769 §6.1).

Finally, Soleimani made clear that he could not be removed as the Manager until the Company had satisfied its obligations to Soleimani under the Term Sheet: "In the event that Mr. Soleimani is so removed as an employee of the Company and the Company ***has satisfied*** its obligations under the Term Sheet, he may be removed as a Manager by the holders of a majority of the Class A Interests." (A1577 ¶15; A1851 §6.1) (emphasis added). In a subsequent draft, Soleimani's counsel reformulated that language as the Proviso, making it a condition precedent to ***both*** his removal as an employee and as Manager into the final language in Section 6.1. (A1578 ¶17; A1976 §6.1). WOGA's counsel was included on and commented on

all of these drafts of the LLC Agreement but did not make any revisions to Section 6.1 following WOGA's initial proposal.

Section 6.1, thus, clarified and solidified the protection Soleimani sought with respect to his equity. While his employment under the Term Sheet could be terminated at will, Section 6.1 of the LLC Agreement ensured that the Company could not remove Soleimani as an employee or as a Manager unless and until it paid him the "put" value of his equity. The Term Sheet already had provided the protection that after five years, even a "for-Cause" termination would not enable the Company to avoid its obligation to pay Soleimani the value of his equity interests. Section 6.1 of the LLC Agreement further required that this payment was a condition precedent to any removal.

2. The Term Sheet

Soleimani, WOHCF and WOGA executed the White Oak Healthcare Finance, LLC Term Sheet – Employment Terms and Conditions (the "Initial Term Sheet") on November 25, 2015. (A494-A528). On October 9, 2020, Soleimani WOHCF and WOGA executed Amendment No. 1 to the White Oak Healthcare Finance, LLC Term Sheet – Employment Terms and Conditions (the "Amended Term Sheet" and together with the Initial Term Sheet, the "Term Sheet"). (A869).

a. The Specified Termination Event Obligations

Sections 3 and 6(i)(B)(iii) of the Amended Term Sheet establish the Specified Termination Event Obligations. Section 3 of the Amended Term Sheet provides in relevant part:

> Upon the occurrence of a Specified Termination Event, Employee shall receive the Calculated Fair Market Value of all his HVE Revenue Sharing Interests no later than the Specified Payment Date.

(A872). "Calculated Fair Market Value" is defined as:

> the Fair Market Value of the HVE Revenue Sharing Interests [and WOAF Economic Interests], as determined by a third party appraiser agreed to by Employee and WOHCF, acting reasonably and in good faith.

(*Id.*). Section 6(i)(B)(iii) of the Amended Term Sheet requires that:

> The Calculated Fair Market Values of his HVE Revenue Sharing Interests, and ownership interests shall be paid to Employee on any Specified Termination Date as provided under HVE Revenue Sharing Interests above.

(A874 §6(i)(B)(iii)). Together, Sections 3 and 6(i)(B)(iii) require the WOHC Entities to purchase Soleimani's equity stake at its fair market value as determined by a mutually-agreed appraiser in the event of a Specified Termination Event.

b. Specified Termination Event

The Term Sheet provides a four-part, disjunctive definition of Specified Termination Event:

> The "***Specified Termination Event"*** shall mean the occurrence of any of the following events: [1] termination of Employee's employment by WOHCF or WOGA without Cause; [2] termination of employment by the Employee for Good Reason (as defined below); [3] Employee's death or Disability; or [4] termination by either the Employee or WOHCF after five (5) years from the Start Date for any reason.

(A872).

Under definition [4], the "For Any Reason Clause," any termination for any reason by either party that occurs after December 31, 2020—five years from the Start Date (defined as "no later than December 31, 2015")—constitutes a Specified Termination Event. The effect of the For Any Reason Clause is to fully vest Soleimani's equity stake after he has devoted five or more years to the business. Regardless of the reason Soleimani is terminated after five years, Soleimani must be paid for his equity stake under Sections 3 and 6(i)(B)(iii) of the Term Sheet.

Just months before the fifth anniversary of the Start Date, the parties negotiated the Amended Term Sheet. In those negotiations, WOGA sought to rewrite the definition of Specified Termination Event to provide that a termination "for Cause" regardless of timing – *i.e.*, even after the fifth anniversary of the Start Date – would not constitute a Specified Termination Event. Specifically, on August 4, 2020, WOGA, through its counsel Kirkland & Ellis, proposed the following definition of Specified Termination Event, ***deleting*** the For Any Reason Clause and proposed replacing it with the bold language:

> [T]ermination of Employee's employment by WOHCF or WOGA without Cause; termination of employment by the Employee for Good Reason (as defined below); or Employee's death or Disability **(it being understood that, for the avoidance of doubt, a termination of Employee's employment by WOHCF for Cause shall in no event be a Specified Termination Event, irrespective of when such termination occurs)**.

(A884-85 (emphasis added)).

WOGA's proposed change would permit WOGA and the WOHC Entities to terminate Soleimani for Cause without paying him for his equity interest even if he had devoted more than five years to the business. Because that was a critical deal point for Soleimani from the outset of the business relationship, Soleimani rejected the proposed rewrite. On August 26, 2020, Soleimani, through his counsel McDermott Will & Emery, provided a markup of the draft Amended Term Sheet that proposed returning to the definition of Specified Termination Event in the Initial Term Sheet, which included the original For Any Reason Clause:

> The "***Specified Termination Event***" shall mean the occurrence of any of the following events: termination of Employee's employment by WOHCF or WOGA without Cause; termination of employment by the Employee for Good Reason (as defined below); ~~or~~ Employee's death or Disability ~~(it being understood that, for the avoidance of doubt, a~~; or termination ~~of Employee's employment~~ by either the Employee or WOHCF ~~for Cause shall in no event be a Specified Termination Event, irrespective of when such termination occurs).~~after five (5) years from the Start Date for any reason.

(A1033). WOGA accepted the definition of Specified Termination Event as it appeared in Soleimani's markup, which is now the definition reflected in the Amended Term Sheet. (*Compare* A497 *with* A872). Through this negotiation,

WOGA conceded that Soleimani's termination after five years from the Start Date, even if for Cause, would be a Specified Termination Event.

c. Arbitration Provision

The Term Sheet provides that any and all disputes and controversies between Soleimani and WOHCF arising out of the Term Sheet, including any alleged breaches of the Term Sheet, shall be submitted to arbitration to the American Arbitration Association ("AAA"). (A505, Schedule A(b); A875 §7(g)). The parties both agree that to determine whether a termination qualifies as "for Cause" is subsumed within that broad agreement. (B20). Likewise, the effect of the appraisal requirement regarding the Calculated Fair Market Value of the Specified Termination Event Obligations is to be determined by the AAA as well.[3]

C. Appellants Purport To Remove Soleimani

On September 18, 2023, the Approval Committee Appellants, acting as members of the Approval Committees, purported to (i) remove Soleimani as an employee of each of the WOHC Entities; (ii) remove Soleimani as Manager of the WOHC LLCs; and (iii) remove WORED GP as the General Partner of WORED.

But to validly remove Soleimani as an employee and Manager of the WOHC Entities, the Approval Committee Appellants must comply with the order of

[3] The AAA Panel has ordered the parties to undergo an appraisal procedure under its supervision.

operations established in Section 6.1 of the Governing Agreements. The Approval Committee Appellants failed to complete or cause the completion of the first step—causing the WOHC Entities to satisfy their Specified Termination Event Obligations, including paying Soleimani value of his equity stake, potentially worth in excess of $100 million. (B58). Until the WOHC Entities have satisfied the Specified Termination Event Obligations, Soleimani cannot be validly removed as an employee and Manager of the WOHC Entities.

D. The Amount Of The Calculated Fair Market Value And Whether Soleimani Was Terminated For Cause Are The Subject Of A Pending Arbitration Pursuant To The Term Sheet

On October 17, 2023, Soleimani filed a demand for arbitration with the AAA to determine (a) whether Soleimani was terminated for "Cause", and (b) the Calculated Fair Market Value of all his HVE Revenue Sharing Interests (i.e., the Specified Termination Event Obligations). (A1065-68). The Arbitration is running concurrently with this action and remains pending with the AAA. The Arbitration panel has required that an appraisal be performed and will address how much Soleimani is owed for his equity stake.

E. The Broader Dispute Between The Parties

On appeal, Appellants assert that they had Cause to terminate Soleimani based on alleged misconduct. (OB., 22-23). Appellees vehemently deny all wrongdoing as the allegations against Soleimani are false and pretextual. Regardless,

Appellants' allegations are irrelevant to this appeal, which is governed by the plain and clear language of the Governing Agreements and Term Sheet demonstrating that Soleimani's removal was ineffective because of Appellants' failure to satisfy their Specified Termination Event Obligations.

ARGUMENT

I. THE COURT OF CHANCERY PROPERLY HELD THAT SECTION 6.1 CREATES A CONDITION PRECEDENT SUCH THAT SOLEIMANI'S TERMINATION WAS INEFFECTIVE

A. Question Presented

Whether the Court of Chancery properly held that Section 6.1 of the LLC Agreements' Proviso, which states that Soleimani can only be removed as employee and then as Manager "provided that the [WOHC Entity] has satisfied its obligations under the Term Sheet relating to a Specified Termination Event," required that the applicable WOHC Entity must have satisfied the Specified Termination Event Obligations under the Term Sheet in order to effectively remove Soleimani. (Opinion, 11-17; 22-25).

B. Scope Of Review

On an appeal from a summary judgment decision, this Court reviews *de novo*. *See Stifel Fin. Corp. v. Cochran*, 809 A.2d 555, 561 (Del. 2002). The Court also reviews questions of contract interpretation, including the interpretation of LLC agreements, *de novo*. *See Holifield v. XRI Inv. Holdings LLC*, 304 A.3d 896, 921 (Del. 2023).

Only questions fairly raised below may be presented for appeal.[4]

[4] Supr. Ct. R. 8.

C. Merits Of Argument

1. Appellants' Interpretation Of Section 6.1 Is Inconsistent With Its Plain Language.

Section 6.1 provides the conditions for Soleimani's removal as an employee and Manager:

> Mr. Soleimani may be removed by the [WOHC Entity] as an employee in accordance with the provisions of the Term Sheet, **provided that the [WOHC Entity] 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).

(A560-61; A617; A674; A727; A786; A843 §6.1 (emphasis added)). Section 6.1 makes the Company's satisfaction of its Specified Termination Event Obligations a condition precedent to removing Soleimani as an employee and Manager. The intent to create a condition precedent is evident from the use of both (i) the phrase "provided that," *see Ainslie v. Cantor Fitzgerald, L.P.*, 2023 WL 106924, at *13 (Del. Ch. Jan. 4, 2023) (citation omitted) ("The use of the language 'provided' is strong evidence that the parties intended to create a condition."), and (ii) the present perfect verb "has satisfied" to indicate that the Specified Termination Event Obligations must have been completed at the time of the termination, *see, e.g.*, *McGee v. D.C.*, 646 F. Supp. 2d 115, 120 (D.D.C. 2009) (interpreting statute that suit could not be filed unless plaintiff "has given notice" to mean "notice … is a

'condition precedent' to filing a suit" because it is "expressed in the perfect tense, mak[ing] it plain that notice must have been given before suit") (citations omitted); *Alexander v. Ames True Temper, Inc., Pension Plan*, 2008 WL 11432094, at *4 (S.D.W. Va. Dec. 19, 2008) (interpreting "the past tense phrase" "If an actively employed participant who… has completed 15 years of benefit service becomes disabled…" to mean "that the years-of-service requirement was intended as a condition that had to be satisfied before the disability occurred") (Opinion, 13).[5]

Appellants offer an array of unavailing arguments to undermine the plain meaning of Section 6.1 that mostly do not engage with the language of that provision. Section 6.1 says what it means and means what it says: Soleimani may be removed as an employee and Manager, but only if the Company "has satisfied" its Specified Termination Event Obligations. (Opinion, 23-24). If the Company has not satisfied the Specified Termination Event Obligations, then his removal is not effective. It is as simple as that.

Appellants' arguments are addressed below.

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[5] Dictionary resources also confirm this concept. "The present perfect," Merriam-Webster.com Dictionary, Merriam-Webster, https://www.merriam-webster.com/dictionary/the%20present%20perfect, last visited Jan. 16, 2024 ("[A] verb tense that is used to refer to an action that began in the past **and is completed at the time of speaking."** (emphasis added); Cambridge Dictionary, https://dictionary.cambridge.org/us/dictionary/english/present-perfect, last visited Jan. 16, 2024 ("[T]he form of the verb used for actions or events that **have been completed or have happened in a period of time up to now**") (emphasis added).

a. The Proviso Is A Condition Precedent

First, Appellants argue that the Proviso creates only a "promise" that merely "acknowledges and reflects … the terms of the Term Sheet." (OB., 30-31). Not so. Section 6.1 is doing real work—as all contractual provisions should under Delaware law. *Weinberg v. Waystar, Inc.*, 294 A.3d 1039, 1044 (Del. 2023) (Delaware Courts "endeavor to give each provision and term effect and not render any terms meaningless or illusory.") (internal quotation marks and citation omitted). The formulation "***provided that*** the [WOHC Entity] ***has satisfied its obligations***" is not just a decoration to refer the parties to the Term Sheet. Rather, Section 6.1 unambiguously makes satisfaction of the Specified Termination Event Obligations a condition precedent for Soleimani's removal as the authorities cited *supra* at 22-23 demonstrate. In short, Section 6.1 can and does modify the right to effect Soleimani's termination as an employee by creating a condition precedent.

Second, and relatedly, Appellants argue that reading the Term Sheet and the WOHC LLC Agreements together, they merely contemplate "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." (OB., 29). Had the parties agreed to a future payment following an effective termination, they could have easily drafted language using the future tense to indicate an action to be completed, *e.g.*, "provided

that "'the [WOHC Entity] ***shall satisfy*** its obligations under the Term Sheet relating to a Specified Termination Event…" (Opinion, 14 n.70). In fact, that is precisely what the parties did when they so intended. (*See* Section 3.1 of the LLC Agreement "***provided that*** the Class A interests ***shall*** be divided…" and Section 6.5(f) "***provided***, that the failure of any Covered Person to give such notice as provided herein ***shall*** not relieve the Company of its obligations…").[6] The parties' use of a future tense "provided … shall" in other parts of the LLC Agreements demonstrate that use of the present perfect "provided that … has satisfied" in Section 6.1 intentionally created a condition precedent. Just as the same language means the same thing in a contract, different language means different things. *Williams Cos., Inc. v. Energy Transfer LP*, 2020 WL 3581095, at *12 n.123 (Del. Ch. July 2, 2020) ("One principle of contract interpretation in Delaware is that the use of different language in different sections of a contract suggests the difference is intentional—i.e., the parties intended for the sections to have different meanings."). (Opinion, 16 n.75).

[6] Indeed, the formulation "provided that … shall" exists four times in the LLC Agreement. (*See* A530; A586; A643; A699; A755; A812 ¶¶3.1(a), 8.2, 9.1(b)(iv), 9.1(b)(v)). By contrast, the condition precedent-establishing formulation "provided that … has satisfied" exists in just Section 6.1.

Third, Appellants cite Scalia and Garner's works to argue that "the words 'provided that' do not unambiguously signal a condition precedent." (OB., 29). Appellants suggest that just because provisos do not *always* create conditions, that *must* be the case here. But Scalia and Garner are clear that, "a proviso is a clause that introduces a condition by the word *provided*. A proviso 'is introduced to indicate the effect of certain things which are within the statute but accompanied with the peculiar conditions embraced within the proviso.' It modifies the immediately preceding language." ANTONIN SCALIA & BRYAN A. GARNER, READING LAW: THE INTERPRETATION OF LEGAL TEXTS 154 (2012) (quoting JAMES DEWITT ANDREWS, "Statutory Construction," in 14 *American Law and Procedure* 1, 48 (James Parker Hall & James DeWitt Andrews eds., rev. ed. 1948). Tellingly, Scalia and Garner do not suggest that "provided that" cannot establish a condition precedent, particularly where, as here, the phrase is combined with the present perfect tense "has satisfied." (Opinion, 14 n.71). Indeed, in a telling omission concerning the interpretation of the Proviso, Appellants fail to argue that the words "has satisfied" do not create a condition precedent, as was an explicit finding of the Court below. (Opinion, 13).

Fourth, Appellants argue that Appellees' interpretation conflicts with reading the contracts as a whole. Specifically, according to Appellants, paying amounts owed related to a Specified Termination Event cannot occur before the termination

becomes effective because the Term Sheet permits the termination of Soleimani's employment "at any time and for any reason." (OB., 32). This demonstrates a basic misconception. As Vice Chancellor Will observed:

> Having the unlimited right to terminate Soleimani does not, however, mean that the termination is unconditional or immediate. There is no conflict between the right to terminate at any time under the Term Sheet and the proviso of Section 6.1 of the LLC Agreements requiring certain conditions to be satisfied for the termination to become effective.

(Opinion, 16). Indeed, it is common for employment agreements to permit immediate termination with delayed effectiveness, such as satisfying a notice provision. There is no conflict between the right to terminate at any time under the Term Sheet and the Proviso in requiring satisfaction of obligations for termination to become effective. Even if there were a conflict between Section 6.1 and the Term Sheet's termination provision, Section 6.1 would control. (A578; A634-35; A691; A744; A803; A861 §11.12) ("To the extent that the Term Sheet conflicts with any provision [of the LLC Agreements], the provisions [of the LLC Agreements] shall prevail."). (Opinion, 16-17 n.78).

Relatedly, Appellants' argument that it is somehow "circular" or "absurd" to apply the plain terms of the Proviso to require payment of the Specified Termination Event Obligations as a condition precedent to Soleimani's termination. (OB., 31-32). Section 3 of the Term Sheet provides that "[u]pon the occurrence of a Specified

Termination Event, Employee shall receive the Calculated Fair Market Value of all his HVE Revenue Sharing Interests *no later than the Specified Payment Date*." (A872 (emphasis added)). The "Specified Payment Date," in turn, is "defined as (A) 3 months after the date of the Specified Termination Event," or, in some circumstances, "(B) 6 months after the date of the Specified Termination Event…" (*Id*.). Thus, under the Term Sheet, the payments for the Specified Termination Event Obligations may, but are not required to, be made after the Specified Termination Event.

Appellants use this timing to argue that payment cannot be a precondition to termination. (OB., 38-40). Appellants are incorrect. There is nothing unusual about making the effectiveness of Soleimani's termination dependent upon the satisfaction of the Specified Termination Event Obligations. To offer a simple example, a person who buys a vehicle through a loan with installment payments has purchased the vehicle but has not "satisfied" the loan until it is completely paid. The analogy applies here: Even if the Term Sheet permits the Company to delay making payment until the Specified Payment Date, Appellants have not "satisfied" the obligation until they have paid it. Section 6.1 clearly states that Soleimani's removal requires that the Company "has satisfied" its obligations. That does not negate the right to terminate "at any time and for any reason" or render absurd the obligation to satisfy the Specified Termination Event Obligations prior to the effectiveness of the

termination. (Opinion, 16 n.77). Here again, to the extent that creates a conflict between the Term Sheet and the LLC Agreements, the LLC Agreements control. (A529-A867 §11.12).

Further, the Term Sheet does not oblige Appellants to wait "many months" to make the payment. (OB., 32). Appellants could have conducted the necessary appraisal beforehand and paid Soleimani the value of his equity interest simultaneously with the Specified Termination Event or otherwise proceeded expeditiously after termination. In that case, termination would have been immediately or promptly effective. Appellants' complaint that the Term Sheet creates an unacceptable gap between starting the process of termination and effective termination is a problem of their own making. The Company can control when to make the payment that will make termination effective.

b. Plaintiffs' Interpretation Of Section 6.1 Harmonizes With The Contracts As A Whole And Does Not Lead To Absurd Results.

Appellants assert that applying the unambiguous terms of the LLC Agreements leads to absurd results. (OB., 31-33). These purported absurdities are not absurd and merely reflect the parties' agreement. "[B]ecause parties may freely set the outer limits of their bargain, they will be bound by the unambiguous terms of their contracts even though the result may be harsh." 11 Williston on Contracts §32:11 (4th ed. 2023). The Court should not entertain Appellants attempt to create

absurdities in an effort to rewrite the contract. "[T]he courts will not indulge in artificial interpretations or abnormal implications in order to save a party from a bad bargain." *Id.* Further, none of Appellants' purported absurdities undermine Appellees' and the Court of Chancery's coherent interpretation of the contracts.

There is no requisite delay period of "many months" between termination as an employee and removal as a manager under Plaintiffs' interpretation. (OB., 32). As explained above, any supposed "delay" between when termination is initiated under the Term Sheet and effective under the LLC Agreements is entirely a product of the Company being unwilling to fulfill its Specified Termination Event Obligations and to promptly agree to a third-party appraiser "reasonably and in good faith." (A872). It is only in the case of the Company's unreasonableness and non-cooperation (as here) that the process drags out.

Appellants' argument that California law prohibits specific enforcement of employment contracts is a red herring. (OB., 32). The LLC Agreements, which establish the mechanism for Soleimani's removal, are governed by Delaware, not California, law. (A577; A634; A691; A743-44; A803; A860 §11.8; Opinion, 24 n.97). And, to the extent it is inconsistent with the Term Sheet, the terms of the LLC Agreements govern. (A529-A867 §11.12). Additionally, Soleimani was not seeking specific enforcement of an obligation for Appellants to employ him. (Opinion, 24 n.97). Rather, he argued, and Vice Chancellor Will held, that "Soleimani's

termination as an employee of the White Oak LLC's is ***ineffective*** under the LLC Agreements." (Opinion, 24-25). No specific enforcement was sought or granted below.

Relying upon an incorrect definition in the Term Sheet, Appellants argue that the Term Sheet requires that the Company's debt must be paid off prior to receiving consideration for a Specified Termination Event and, accordingly, Soleimani could effectively remain Manager perpetually by delaying the repayment of the debt. (OB., 33). Not so. The payment to Soleimani does not require the payoff of the Company's debt. In a Specified Termination Event, Soleimani is entitled to "receive the Calculated Fair Market Value" not the "Net Fair Market Value," which is the definition Appellants misleadingly cite. The Calculated Fair Market Value, to which Soleimani is entitled, does not require a debt payoff. *See* (A872) (defining "Calculated Fair Market Value" as "the Fair Market Value of the HVE Revenue Sharing Interests [and WOAF Economic Interests], as determined by a third party appraiser agreed to by Employee and WOHCF, acting reasonably and in good faith."). This is made still more clear by Section 11.12 of the LLC Agreements, which states:

> 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…

(A577; A634-35; A691; A744; A803; A861 §11.12 (emphasis added)). Section 11.12 makes it clear that the termination of Soleimani's employment requires the payment of the Calculated Fair Market Value (which does not require debt payoff), *not* the Net Fair Market Value. In any event, there is nothing absurd about "perpetual management": the Delaware Limited Liability Company Act contemplates that parties to a limited liability agreement may agree to perpetual management. (*See e.g.*, 6 *Del. C.* § 18-602 (addressing issues where the limited liability company agreement prohibits the manager from resigning); *see also* Opinion, 23 n.96).

2. Appellants' New Argument That Section 6.1 Is Ambiguous Was Waived And Is Unsupported.

Appellants new argument that Section 6.1 of the LLC Agreements are ambiguous was not raised below and should not be considered now. (OB., 34-35). Pursuant to Rule 8 of this Court, "[o]nly questions fairly presented to the trial court may be presented for review; provided, however, that when the interests of justice so require, the Court may consider and determine any question not so presented." Supr. Ct. R. 8. This Rule applies to arguments concerning contract construction. *See Oxbow Carbon & Minerals Holdings, Inc. v. Crestview-Oxbow*

Acquisition, LLC, 202 A.3d 482, 508-09 (Del. 2019) (holding that a party waived an issue for appeal where its contract interpretation arguments shifted and "conflicts with the positions the [party] actually did take" below); *CCSB Fin. Corp. v. Totta*, 302 A.3d 387, 403 (Del. 2023) ("CCSB did not argue below that the CIBCA definition should apply. The argument is waived, and, in any event, CCSB acknowledged at least twice that 'acting in concert' was an undefined term.").

Here, Appellants explicitly argued that "[t]he ***unambiguous language*** of [the LLC Agreements and the Term Sheet] authorized Soleimani's removal as employee and Manager, and Appellants' Motion for Summary Judgment should be granted." A1082 (emphasis added). Indeed, Appellants included an argument heading – with no alternative argument – that "Section 6.1 of the LLC Agreements ***Unambiguously*** Authorized the Approval Committees of the WOHC Entities to Remove Soleimani as Manager Upon the Termination of His Employment." A1106 (emphasis added). Appellants did not argue below that Section 6.1 was ambiguous.

In any event, as noted above, the language that "Mr. Soleimani may be removed by the [WOHC Entity] as an employee in accordance with the provisions of the Term Sheet, provided that the [WOHC Entity] has satisfied its obligations under the Term Sheet relating to a Specified Termination Event" unambiguously establishes the payment of the Specified Termination Event Obligations as a condition precedent to his termination as employee and then Manager. Because it is

unambiguous, extrinsic evidence may not be considered. *Thermo Fisher Sci. PSG Corp. v. Arranta Bio MA, LLC*, 2023 WL 2771509, at *23 (Del. Ch. Apr. 4, 2023) ("Where the contract is unambiguous, extrinsic evidence may not be used to interpret the intent of the parties, to vary the terms of the contract or to create an ambiguity.") (internal quotations and citation omitted); *see also Garfield ex rel. ODP Corp. v. Allen*, 277 A.3d 296, 315 (Del. Ch. 2022) (a court "will not torture contractual terms to impart ambiguity where ordinary meaning leaves no room for uncertainty."); (Opinion, 10).

If, however, there is an ambiguity, as shown *supra* 16-18, there is no material issue of fact that the negotiating history demonstrates that Soleimani insisted that he receive the value of his equity interest before he could be terminated as employee and Manager.

II. THE COURT OF CHANCERY PROPERLY HELD THAT THERE WAS A "SPECIFIED TERMINATION EVENT" BECAUSE A PURPORTED TERMINATION FOR CAUSE WAS A TERMINATION FOR "ANY REASON"

A. Question Presented

Whether the Court of Chancery correctly concluded that the purported termination of Soleimani by WOHCF for Cause more than five years after his start date constituted a "Specified Termination Event" where the Term Sheet defined a "Specified Termination Event" as including "*termination by … WOHCF* after five (5) years from the Start Date *for any reason.*"

B. Scope Of Review

On an appeal from a summary judgment decision, this Court reviews *de novo*. *See Stifel Fin. Corp.*, 809 A.2d at 561. The Court also reviews questions of contract interpretation, including the interpretation of LLC agreements, *de novo*. *See Holifield*, 304 A.3d at 921.

Only questions fairly raised below may be presented for appeal.[7]

C. Merits Of Argument

1. Soleimani's Purported "For-Cause" Termination Is A Specified Termination Event.

The definition of Specified Termination Event includes four separate, disjunctive clauses:

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[7] Supr. Ct. R. 8.

> ***The "Specified Termination Event" shall mean the occurrence of any of the following events***: [1] termination of Employee's employment by WOHCF or WOGA without Cause; [2] termination of employment by the Employee for Good Reason (as defined below); [3] Employee's death or Disability; or [4] ***termination by*** either the Employee or ***WOHCF after five (5) years from the Start Date for any reason***.

(A872 (emphasis added)). The For Any Reason Clause (clause [4]) provides that the "termination by either Employee or [WOHC Entity] after five (5) years from the Start Date for any reason" constitutes a Specified Termination Event. Appellants' purported termination of Soleimani "for Cause" on September 18, 2023—more than five years from the Start Date—constitutes a Specified Termination Event under the For Any Reason Clause.

On its face, the Specified Termination Event definition makes clear that "for any reason" includes a for-Cause termination. That provision identifies multiple "reasons" for termination: by WOHCF with or without "Cause," by Employee with or without "Good Reason" and Employee's "death or Disability." The word "any" in the clause "by WOHCF … for any reason," identified immediately after the potential reasons for termination clearly encompasses all such reasons. (Opinion, 18 n.83).

Further, the very termination clause upon which Appellants center their arguments why their purported termination was effective immediately (OB., 1, 4,

11, 25, 27-28, 33-34) explicitly defines termination for "any reason" as including a termination "with … Cause." That provision provides that:

> 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; A500 (emphasis added)). The intent that "for any reason" includes a for-Cause termination is made explicit by the parenthetical that follows the phrase "for any reason" in the termination clause as meaning a termination by WOHCF "with or without Cause." (Opinion, 21). It is black letter law that the same words used in different places in the same contract should mean the same thing. *E.g.*, *Tex. Pac. Land Corp. v. Horizon Kinetics LLC*, 306 A.3d 530, 564, at *25 (Del. Ch. 2023) ("A court strives to interpret words similarly when the same term is used in different places in the same document"). That the same phrase—"for any reason"—would have completely different meanings in the same agreement and in the same context, of course, cannot be the case, which the Chancery Court found. (Opinion, 21 n.92). A termination "for Cause" is a termination "for any reason." Any other interpretation would be nonsensical.

Appellants argue that "[r]eading the Term Sheet as a whole" shows that the parties distinguished what Soleimani was owed under a for-Cause termination and Specified Termination Event. (OB., 38). Improperly omitting the termination clause

from their purported "reading of the Term Sheet as a whole," Appellants argue that Clause (A) and Clause (B) of the Term Sheet created a mutually exclusive "dichotomy" between these two circumstances. (OB., 39). Wrong.

First, Appellants' assertion that Clauses (A) and (B) demonstrate the parties' intent that a Specified Termination Event not include a "for-Cause" termination is belied by the express language of Clause B that acknowledges a Specified Termination Event includes a termination "by WOHCF for Cause," which Appellants assert is impossible:

> (B) If Employee's employment is terminated due to a Specified Termination Event, (i) Employee shall be entitled to receive on or prior to the Specified Payment Date … (ii) any unpaid Guaranteed Bonus payments … shall be accelerated and paid to Employee on the applicable Specified Payment Date **(other than in connection with a Specified Termination Event that is by the Employee without Good Reason or by WOHCF for Cause)**

(A874 §6(i)(B)(i)-(ii) (emphasis added)). This clearly demonstrates that the parties understood that a Specified Termination Event could include a termination "by WOHCF for Cause." It would, of course, be unnecessary to carve out a "Specified Termination Event that is … by WOHCF for Cause" from the obligation to make Guaranteed Bonus Payments if, as Appellants contend, a Specified Termination Event does not include the possibility of a "for Cause" termination. As the Court

below observed, "[i]f a Specified Termination Event excluded all terminations for Cause, this text would be surplusage." (Opinion, 21).

Second, Appellants' premise that Clause (A) and (B) establish a mutually exclusive dichotomy concerning payments in a for-Cause termination and Specified Termination Event is incorrect. Clause (A) identifies four categories of payments that Soleimani is entitled to receive following a "for Cause" termination. (A874 §6(i)(A)). Because those identified categories do not include a payment for his revenue sharing interests, Appellants argue that Clause A demonstrates the parties' intent that Soleimani was not entitled to receive such a payment in the event of a "for Cause" termination. (OB., 38). But those obligations are not identified as the exclusive remedies in the event of a "for Cause" termination. Indeed, Appellants omit that Clause (A) also identifies three categories of payments to which Soleimani ***is not entitled*** upon a "for Cause" termination. And, those categories, likewise, ***do not*** include a payment for his revenue sharing interests. (A874 §6(i)(A)(iv)(a)-(c)). Thus, Clause A does not specifically address whether Soleimani is—or is not—entitled to a payment for his revenue sharing interests in the event of a "for Cause" termination. That is because in a for-Cause termination, Soleimani would ***sometimes*** be entitled to payment for his revenue sharing interests (if after five years) and sometimes would not (if before five years).

Third, Appellants incorrectly rely on the canon of construction that a specific provision prevails over a conflicting general provision to argue that Clauses (A) and Clauses (B) address whether a for-Cause termination (after five years) may constitute a Specified Termination Event. (OB., 39). Appellants apply the canon backwards—the specific provision in the Term Sheet identifying what constitutes a Specified Termination Event is the definition of Specified Termination Event. Appellants' contention that the Court should look beyond the definition of a Specified Termination Event for more "specific" language regarding what constitutes a Specified Termination Event is illogical.

There are two provisions that specifically identify when Soleimani is entitled to the payment for his revenue sharing interests. Clause B provides that, in the event of Specified Termination Event, "the Calculated Fair Market Values of his HVE Revenue Sharing Interests, and ownership interests shall be paid to [Soleimani]." (A874 §6(i)(B)(iii)). Likewise, the section of the term sheet entitled, HVE Revenue Sharing Interests, provides that "[u]pon the occurrence of a Specified Termination Event, [Soleimani] shall receive the Calculated Fair Market Value of all his HVE Revenue Sharing Interests no later than the Specified Payment Date." (A872). Thus, once again, Appellants turn the "specific over the general" canon on its head in arguing that Clause A implicitly addresses whether Soleimani is entitled to payment

for his revenue sharing interests and, thus, should control over the provisions that expressly address the issue.

2. Appellants' New Argument That The Term Sheet Is Ambiguous Was Waived And Is Unsupported.

As with the LLC Agreements, Appellants argued below that the Term Sheet is unambiguous (A1082) and therefore waived and did not preserve their new argument that the Term Sheet is ambiguous. Indeed, when asked by Vice Chancellor Will at oral argument whether the Term Sheet was ambiguous, Appellants' counsel was unequivocal that they were not asserting ambiguity:

(i) "I don't think there's ambiguity. I think it's pretty clear." (B119); and

(ii) "THE COURT: Do you think there is an ambiguity in this – –

ATTORNEY CANDIDO: I think Clause (A) and Clause (B) are pretty clear. So no." (B126)

The Chancery Court correctly concluded that there was no ambiguity that the "For Any Reason" clause included a purported termination for Cause: "'For any reason' is a broad, inclusive phrase. Soleimani's employment was purportedly terminated by the Approval Committees on September 18, 2023—for a reason." (Opinion, 18 (citations omitted)). Moreover, if there is an ambiguity whether a Specified Termination Event could include a for-Cause termination, the negotiating history whereby Soleimani ***rejected*** WOGA's attempt to eliminate the "For Any Reason" clause while simultaneously adding language that doing so would, "for the

avoidance of doubt," result that "a termination of Employee's employment by WOHCF for Cause shall in no event be a Specified Termination Event, irrespective of when such termination occurs" (A884-A885), makes clear the parties' contemporaneous understanding that a for-Cause termination after five years from the Start Date constituted a Specified Termination Event.

In addressing (inadmissible and irrelevant) parol evidence, rather than address actual negotiating history, Appellants point to an unsigned, non-contemporaneous "memorandum" prepared by WOGA counsel and titled "WOHCF Basic Considerations" to assert that the For Any Reason Clause does not mean what it explicitly says. That memorandum states, among other things, that, "[i]f terminated for cause, Isaac receives nothing for his interest in WOHCF." (A1131 ¶5). But, that memo was drafted by WOGA's counsel ***seven months after*** the execution of the Initial Term Sheet and was not signed by Soleimani[8], so it is irrelevant as to the parties' intent. (*See* A1136-40). And, in any event, at the time that WOGA's counsel drafted the memo, Soleimani would not have been entitled to payment for his HVE Revenue Sharing Interests in the event of a "for-Cause" termination because it would

[8] Misleadingly, Appellants assert that the MOU was "signed off on by … Soleimani" (OB., 41). That is wrong. The document is unsigned and WOGA personnel merely asserted that it was "signed off on" in an email to which there is no record of Soleimani assenting. (A1140).

have been less than five years from the Start Date. And, the memo explicitly referenced "***certain protections*** and requirements built into the term sheet … ***which mitigate the risk that Isaac would be terminated simply to deny him the value earned by him.***" (A1138 (emphasis added)). The five-year vesting provision for his equity stake was one such way Soleimani mitigated the risk of a WOHCF termination intended to deny him the value created and earned by him, which is exactly what Appellants are attempting.

Appellants also argue that a "Memorandum of Understanding" purportedly agreed to by the parties prior to the Amended Term Sheet negotiations (the "MOU") shows that the parties' did not intend to affect "the parties' other rights and obligations in the" Initial Term Sheet. (OB., 20-21). Appellants are incorrect about the status quo at the time of the negotiations. The For Any Reason Clause, as it existed both before and after the Amended Term Sheet, confirmed that Soleimani was entitled to payment for his equity interest in the event of a termination "for any reason," including "for Cause," occurring five years after the Start Date. To the extent it is considered (and it should not be), the best extrinsic evidence of the parties' intent is the drafting history of the Term Sheet. (See *supra* at 12-14).

III. THE COURT OF CHANCERY PROPERLY HELD THAT THE VALUE OF THE SPECIFIED TERMINATION EVENT OBLIGATIONS WAS RESERVED FOR ARBITRATION AND THERE WAS NO GENUINE ISSUE OF FACT THAT IT WAS ZERO

A. Question Presented

Whether the Court of Chancery properly concluded that the value of Appellants' Specified Termination Event Obligations was subject to an appraisal process and covered by an arbitration provision, such that Appellees were entitled to summary judgment based on Appellants' failure to satisfy the condition precedent to Soleimani's removal by not paying the Specified Termination Event Obligations. (Opinion, 22 n.94).

B. Scope Of Review

On appeal from a summary judgment decision, this Court reviews *de novo* and determines whether there is a genuine issue of material fact. *Grabowski v. Mangler*, 938 A.2d 637, 641 (Del. 2007).

C. Merits Of Argument

Appellants argue that Court of Chancery "side-stepped" a factual dispute that the value of the Specified Termination Event Obligations was zero in pointing out that valuation of those interests are "subject to an arbitration provision and are not before me." (OB., 44, *citing* Opinion, 22 n.94.). Appellants contend that their assertion that the value is zero is a "factual dispute" that precluded the grant of summary judgment to Soleimani. (OB., 44-45). Utter nonsense.

If there is *any* value to the HVE Revenue Sharing Interests, it is undisputed that Appellants did not pay it to satisfy their Specified Termination Event Obligations. (A33; B58). The Court of Chancery correctly concluded that the determination of that value was subject to arbitration and the appraisal requirement in the Term Sheet (A875 §7(g)), so it need not address it. Indeed, Appellants wrongfully refused to engage in an appraisal process to determine such value. Nor is there an undisputed issue of fact that the value was zero and the Specified Termination Event Obligation did not exist, as would be necessary for Appellants' argument to hold water. Here, Appellants assert there is zero value based on the unsupported *ipse dixit* of one appellant. (A1156-57 ¶36). Such "just-take-my-word-for-it" evidence is insufficient to create a genuine issue of material fact. *Benefits Plus v. Mid-Atlantic Health Sys., Inc.*, 862 A.2d 385 (Del. 2004) (TABLE) (affirming grant of summary judgment where non-moving party "merely presented unsupported allegations and did not offer any evidence … to create a genuine issue of material fact"). By contrast, Soleimani pointed to evidence (A1584, ¶28) that the underlying assets of which the Specified Termination Event Obligations comprise a 16.785% stake, had recently been valued at $650-$850 million (A2163-A2183; A2168), subject to an offer to purchase of $300 million (A2157-A2161), and valued by advisors hired by Appellants at $225-$290 million (A2185-A2263; A2231). Because Appellants have not made any payment for the Specified Termination Event

Obligation as necessary to satisfy the condition precedent to Soleimani's removal as employee then manager or conclusively established that the value of Soleimani's interest is zero, Soleimani was entitled to summary judgment and the Court of Chancery should be affirmed.

CONCLUSION

For the foregoing reasons, the Court of Chancery's Opinion and Order should be affirmed.

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