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IN THE SUPREME COURT OF THE STATE OF DELAWARE

RMP SELLER HOLDINGS, LLC f/k/a NEW SAVE MART CORP.,	)	
Respondent/Counterclaim-Petitioner Below, Appellant,	)	No. 117, 2024
v.	)	Court Below: Court of Chancery of the State of Delaware, C.A. No. 2023-0957-JTL
SM BUYER LLC and SM TOPCO LLC,	)	
Petitioners/Counterclaim-Respondents Below, Appellees.	)	

APPELLEES' ANSWERING BRIEF

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NATURE OF PROCEEDINGS

This appeal arises from a challenge to an Arbitration Award that "flows entirely from the language of the [parties'] Agreement" and "diligently applied" Delaware contract law. Appellant's Ex.A at 9–10. Applying established precedent from this Court, the Court of Chancery determined that the Arbitration Award—issued by a former Vice Chancellor—did not, in any way, represent a "manifest disregard for the law." Seller claims that this case presents an "ideal vehicle to clarify precedent and confirm that radical awards issued with disregard for contractual terms remain subject to meaningful judicial review." Br.1. But there is no precedent to clarify, only precedent to follow. That precedent instructs that "review of an arbitration award is one of the narrowest standards of judicial review in all of American jurisprudence." *SPX Corp. v. Garda USA, Inc.*, 94 A.3d 745, 750 (Del. 2014) (quotations omitted).

The underlying dispute involved a routine question of contract interpretation. In March 2022, Appellant RMP Seller Holding LLC ("Seller") and Appellees SM Buyer LLC and SM Topco LLC (collectively, "Buyer" and, together, the "Parties") entered into an Equity Purchase Agreement ("EPA") pursuant to which Seller agreed to sell to Buyer its equity interest in Save Mart Supermarkets ("Save Mart" or the "Company") and its majority equity interest in a subsidiary of Save Mart, Super Store Industries ("SSI"). For Seller, this transaction (the "Transaction") was the end

of a nearly two-year effort to sell its interests in the Company through a "dual-track process" that started with the sale of the valuable real-estate assets associated with the Company for $1.15 billion, followed by a sale of the Company itself.

The purchase price methodology was a customary cash-free, debt-free construct,[1] and the EPA contains a customary purchase price adjustment mechanism that allowed Buyer to adjust the agreed-upon Purchase Price based on certain, specifically defined components, including "Closing Date Indebtedness." Closing Date Indebtedness was broadly defined to include the "aggregate amount of all Indebtedness of the Group Companies as of the Adjustment Time." A186.[2] This included any "indebtedness … for borrowed money" of Save Mart or its subsidiaries, as well as any "indebtedness … for borrowed money" that Save Mart was an "obligor, guarantor, or surety." A191–92. Based on this language, Buyer included in its calculation of Closing Date Indebtedness the outstanding debt "for borrowed money" that SSI had as of the Adjustment Time (the "SSI Debt"). B95.

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1 "Cash-free[,] debt-free" is a common M&A term referring to an acquisition model where the seller keeps its cash but has to pay off funded debt. *See*, *e.g.*, Robert B. Moore, Issues in Negotiating Cash-Free Debt-Free Deals, RSM US LLP (2015), https://rsmus.com/pdf/wp_tas_cash_free_debt-free_transactions.pdf (last visited June 6, 2024).

2 Capitalized terms used but not defined herein have the meanings ascribed to such terms in the EPA.

Despite enjoying the benefits of a $205 million pre-Closing cash sweep, Seller disputed Buyer's inclusion of the SSI Debt on the Closing Statement, and the Parties agreed to resolve the dispute in binding arbitration before former-Vice Chancellor Joseph R. Slights III. After overseeing "a private equivalent of a Chancery proceeding," in which Buyer and Seller fully and vigorously disputed whether the SSI Debt could be considered Closing Date Indebtedness, Appellant's Ex.A at 8, the Arbitrator found that deciding the dispute was ultimately "not difficult." A49. In a thorough, well-reasoned 51-page award, the Arbitrator concluded that the EPA's plain language "unambiguously" captured the SSI Debt as Closing Date Indebtedness. A55. The Arbitrator noted that Seller itself conceded that the "SSI Debt could be made to fit within the definition of Indebtedness." A61 n.53. In addition to reaching that conclusion, the Arbitrator analyzed each of Seller's arguments and explained in detail why each was unpersuasive. A64–94.

Dissatisfied, Seller sought to vacate the Arbitration Award in the Chancery Court, asserting that the Arbitrator acted in manifest disregard of the law. The Chancery Court disagreed and confirmed the Award. Vice Chancellor Laster determined that the Arbitration Award "flows entirely from the language of the [EPA]," and that in reaching this conclusion, the Arbitrator "did not willfully flout the governing law." Appellant's Ex.A at 10. Indeed, "the Arbitrator cited and followed many Delaware precedents that set out principles of contract interpretation

which ... support the result he reached." *Id.* Despite casting his personal doubts on whether he would have found for the Buyer had he been the arbitrator, Vice Chancellor Laster nonetheless rejected Seller's argument that the result was "contrary to the spirit of the agreement" under this Court's decision in *Chicago Bridge & Iron Co. N.V. v. Westinghouse Electric Co.*, 166 A.3d 912 (Del. 2017), finding that the dispute was resolved in "full-blown arbitration" by a former Vice Chancellor experienced in contract interpretation and Delaware law, meaning that the "concerns" motivating the decision in *Chicago Bridge* did "not apply" here. Appellant's Ex.A at 10. Finding that Seller failed to make the "uphill climb" required to establish manifest disregard for the law, the Chancery Court confirmed the Award. *Id.* at 6, 11.

Seller now appeals to this Court. Just as it did below, Seller does little more than recycle *the same arguments* it presented to the Arbitrator. But courts reviewing arbitration awards under the Federal Arbitration Act ("FAA") are in no position to consider the merits of the underlying dispute, even where a party argues that the arbitrator has manifestly disregarded the law. Instead, Delaware courts consider whether the "arbitrator consciously chose to ignore a legal principle, or contract term, that is so clear that it is not subject to reasonable debate." *SPX*, 94 A.3d at 747. As Vice Chancellor Laster found, "the challenge to the Award in this case is weaker than the failure to follow the formula in *SPX*." Appellant's Ex.A at 8.

Here, the Arbitration Award simply enforces the plain language of the Parties' contract. The Arbitrator did not ignore certain contract terms or inappropriately rely upon extrinsic evidence. He applied relevant legal principles and appropriately distinguished inapposite case law, including in his explanation of why accounting for the SSI Debt does not invert the economics of the overall Transaction. His assessment comes nowhere close to establishing a manifest disregard for the law. Ultimately, Seller's appeal is just another misguided attempt to escape a contractual bargain with which it is unsatisfied. The Chancery Court correctly confirmed the Award, and this Court should affirm.

SUMMARY OF ARGUMENT

1. DENIED. The Chancery Court did not err in confirming the Award, which in no way violates the plain terms of the EPA. Indeed, "Seller conceded during the arbitration that the [SSI Debt] plausibly falls within a literal reading of the definition of Closing Date Indebtedness," Appellant's Ex.A at 9. Seller's argument that the Accounting Rules nonetheless narrow the scope of Closing Date Indebtedness is an attempt to relitigate the merits of the arbitration. Even a cursory review of the Arbitration Award shows that the Arbitrator thoroughly analyzed the text of the EPA, including whether the Accounting Rules applied to Closing Date Indebtedness. A68–80. Even if this Court were to look at the underlying merits, the Arbitrator correctly found that the words "as applicable" in Section 1.4(d) mean that Accounting Rules do not apply to the defined term Closing Date Indebtedness at all. Even if they did, the Arbitrator correctly found that the inclusion of SSI Debt within Closing Date Indebtedness does not violate any Accounting Rules.

2. DENIED. The Arbitrator did not rely on extrinsic evidence, and the Court of Chancery correctly rejected that argument. Former Vice-Chancellor Slights explicitly stated in the Arbitration Award that, because the EPA's language is "clear and unambiguous ... as written," A49, there is "no basis to consider extrinsic evidence" under Delaware law, A55. The Arbitrator intentionally limited his analysis to the four corners of the EPA and did not cite to or rely on any extrinsic

evidence to arrive at his interpretation. *Id*. The Chancery Court correctly found that the Arbitrator strictly "analyzed the Agreement as a whole and interpreted its language consistent with" Delaware's "highly contractarian jurisprudence." Appellant's Ex.A at 9.

3. DENIED. Seller's characterization of post-closing adjustments is not supported by Delaware law. The Arbitrator correctly found that *Chicago Bridge*, a highly idiosyncratic case, did not control the result here, and he did not manifestly disregard the law by declining to follow *Chicago Bridge*. Seller's arguments about the economics of the Transaction neglect to mention the $1.15 billion Seller earned from the Sale-Leaseback and the $205 million pre-Closing cash sweep that Seller bargained for. But in any event, they do not present a valid basis for vacatur. Finally, Seller's argument that Buyer improperly "reclassified" debt is also incorrect. The Arbitrator correctly determined that the Historical Principles did not apply to the calculation of Closing Date Indebtedness, because that calculation only required the Parties to compile components of defined debt.

4. DENIED. Seller's argument that the Chancery Court misapplied *SPX* in declining to vacate the Arbitration Award is both irrelevant under the standard of review and incorrect on the merits. The standard of review confines this Court to consider whether the Arbitrator, not the Chancery Court, manifestly disregarded the law. Here, consistent with *SPX*, the Arbitrator acknowledged Seller's arguments

and analyzed each section of the EPA, including the Accounting Rules, before ultimately rejecting Seller's interpretation of the application of those rules and the EPA as a whole. His analysis and ultimate decision therefore do not justify vacatur.

COUNTERSTATEMENT OF FACTS

A. RELEVANT FACTS.

1. Seller Initiates a Two-Phased Sale of Save Mart.

In 2019, when the Piccinini family was no longer interested in continuing to run their chain of California and Nevada grocery stores, Seller began exploring a sale of Save Mart. B84; A842 at 23:13–14. Initially, Seller attempted to sell Save Mart and its more valuable real estate portfolio to a single buyer. B84; A842 at 24:18–22. After it became clear that no bidders were interested in Save Mart, Seller decided to split the Transaction into two phases and sell the Company's real estate assets separately from the operating business in order to "achiev[e] superior value for the Company's shareholders." B84; A842 at 23:13–14, 24:22–25:8. Seller's financial advisor, Solomon Partners, believed that this was the best way for Seller to "optimize" the value of the Company's assets. B84; A2516–17 at 21:17–22:10, 22:20–23:9.

On October 28, 2020, Seller finalized the first stage of the transaction by selling its valuable real-estate portfolio to a real estate private-equity firm in a sale-leaseback ("Sale-Leaseback"). B84. Under the terms of that deal, Seller sold 72 Company-owned properties, netting *$1.15 billion*—an amount far in excess of the $850 million pre-sale appraisal of the real estate. B84–85; A2538 at 108:15–19. As part of this deal, Seller also caused Save Mart to enter 16- and 24-year lease

agreements for the 72 properties formerly owned by the Company. B85; A2538 at 108:13–20. These leases left the Company responsible for tens of millions of dollars in annual cash rent payments where it previously had none. B85. Meanwhile, Seller distributed the cash proceeds of the sale of the Save Mart's real estate portfolio to its ultimate equity holders—the members of the Piccinini family. B85; A2538 at 108:13–20.

With the Sale-Leaseback complete, Seller shifted its focus to selling the equity interests of the operating Company. It began soliciting bids in the summer of 2021. B85; A2522 at 43:18–23. Seller initially favored another private equity-sponsored bidder, but negotiations collapsed in early December 2021, due in large part to concerns about Save Mart's potential exposure to *more than $500 million* in withdrawal liability under the Multi-Employer Pension Plan Act in connection with the Company's participation in five different multi-employer pension plans. B85–86; A2524–25 at 51:6–52:5, 57:19–23. On December 10, 2021, Solomon Partners contacted Buyer. B86. Two weeks later, the Parties entered an exclusivity agreement and began negotiating the terms of the Transaction. B87.

2. The Parties Negotiate the EPA.

On December 10, 2021, during its initial outreach, Solomon Partners sent Seller's initial drafts of the EPA and the accompanying Disclosure Schedule. B86.

Across 12 drafts of the EPA, the following key provisions, which were drafted by Seller, never changed. *Id*.

- "Closing Date Indebtedness" was defined as "the aggregate amount of all Indebtedness of the Group Companies as of the Adjustment Time." A186.
- "Group Companies" was defined as "the Company and the Operating Subsidiaries." A190.
- "Indebtedness" "of any Person" included "(i) the outstanding principal amount of an[] accrued or unpaid interest of (A) indebtedness of such Person or its Subsidiaries for borrowed money" and "(xi) all ... obligations of the type referred to in clauses (i) – (x) of other Persons for the payment of which such Person or its Subsidiaries is responsible or liable, directly or indirectly, as obligor, guarantor or surety." A191–92.
- "Subsidiary" was defined as "any Person of which a majority of the outstanding share capital, voting securities or other Equity Interests is owned, directly or indirectly, by another Person." A197.

B86. Section 3.4(b) of the EPA also stated that "Section [3.4(b)] of the Company Disclosure Schedule sets forth a true and correct list of all direct and indirect Subsidiaries of the Company (the "Operating Subsidiaries")." B87; A543–47. The Disclosure Schedule identified SSI as the first subsidiary on the Schedule of Operating Subsidiaries of Save Mart. B87; A543.

Seller did, however, revise the list of specific items to be excluded from Indebtedness throughout negotiations. For example, Seller revised the definition to exclude any contingent withdrawal liability with respect to Save Mart's participation in "any multi-employer pension fund." *Compare* B87, B113 *with* B87–89, B113.

Seller never amended the EPA to exclude the SSI Debt from the definition of Indebtedness.

3. Super Store Industries and the SSI Debt.

During its due diligence process, Buyer learned of a substantial amount of debt associated with Save Mart's joint venture, SSI. This debt—the SSI Debt—was composed of borrowed money from two loan agreements that SSI had entered into with Bank of America. Br.9–10. The first agreement, executed in November 2012, was for a revolving line of credit that, following subsequent amendments, permitted SSI to borrow up to $100 million. B83. As of the Adjustment Time, SSI had $81,691,000 of outstanding debt associated with this loan. B84. The second agreement, executed in November 2017, was for a non-revolving line of credit used to finance the construction of a manufacturing and production facility at one of SSI's properties. B83. As of the Adjustment Time, SSI had $27,358,000 of outstanding debt associated with this loan. B84. Thus, as of the Adjustment Time, SSI had $109,049,000 of outstanding debt associated with these two loan agreements. Br.9–10. Under the explicit terms of both loan agreements, all general partners of SSI—including Save Mart—individually guaranteed the outstanding debt on these loans. B83–84; *see also* A1458; A1729.

To alleviate concerns from Buyer's lenders, the EPA contemplated that Buyer would purchase SSI separately so that SSI would be outside the credit parties of the

go-forward business. While this restructuring satisfied the Buyer's acquisition lenders, the SSI Debt remained a guaranteed obligation of the go-forward company group and, in the event of a default by SSI of such SSI Debt, the lenders of SSI could proceed directly against the general partner guarantors. B90.

4. The Pre-Closing Statement and the Closing.

On March 7, 2022, after three months of negotiations, the Parties executed the EPA. *Id*. The Parties then spent the next several weeks preparing for the Closing. B12; A100. As a part of this process, Buyer and Seller entities entered a Contribution, Assignment, and Assumption Agreement ("CAAA") on March 25, 2022. B12; A1079–84 (CAAA). As contemplated by the EPA, the Parties also executed the Amendment, which, as discussed above, specified that, at the Closing, SM Buyer LLC would acquire Save Mart's equity interest, and SM Topco LLC (SM Buyer LLC's parent) would acquire Seller's equity interest. B12; A502.

During this time, Seller also prepared its Pre-Closing Statement as part of the EPA's purchase price adjustment process. A106–08; B12–13. Purchase price adjustments represent a customary feature of M&A transactions under which the components used to derive the purchase price are estimated by the seller prior to the closing and then adjusted to reflect their actual amounts post-closing. B13. In the Transaction, under Section 1.4(a) of the EPA, Seller was required to prepare the Pre-Closing Statement "in a manner consistent with the definitions of the terms (as

applicable) Working Capital, Closing Cash, Closing Date Indebtedness, and Transaction Expenses, including, as applicable, the Accounting Rules." A107. The amount reflected in the Pre-Closing Statement represented the Estimated Purchase Price. *Id.*

Seller delivered its final version of the Pre-Closing Statement to Buyer on March 25, 2022. B13; B53–55. The estimate for Closing Cash was zero dollars.[3] B56–65. Separately, despite the plain language of the definition of Indebtedness, Seller's estimate for Closing Date Indebtedness did not include the SSI Debt. B13; B56–65.

The Transaction closed on March 28, 2022. B13; B67. As contractually required, on the Closing Date Buyer paid Seller $32,590,731. B13; B56–65; B69–71. This number represented the net proceeds to Seller—that is, what remained of the Base Value—*not* the purchase price. Had Seller not swept Closing Cash prior to the Closing Date and instead been paid for Closing Cash at Closing, the net purchase price paid at Closing would have been roughly $237,590,731. A portion

[3] This was because, in lieu of having Buyer pay for Closing Cash at closing, Buyer allowed Seller to sweep cash from Save Mart's accounts to simplify the closing payments. A148–49. Therefore, on the same day it delivered the Pre-Closing Statement, Seller swept approximately $205 million in cash from the Company. B13; B50–52. Had Seller not swept the Closing Cash right before closing, the purchase price paid by Buyer at Closing would have been increased by $205 million.

of the purchase price in the amount of $7,007,300 was deposited with an escrow agent as a source of funds for any post-Closing purchase price adjustment in Buyer's favor. B13; B180.

5. The Closing Statement and Subsequent SSI Debt Dispute.

On June 27, 2022, three months after the Closing, Buyer delivered its Closing Statement to Seller. B14; A819. Like Section 1.4(a), Section 1.4(d) required the Closing Statement to be prepared "in a manner consistent with the definitions of the terms Working Capital, Closing Cash, Closing Date Indebtedness, Transaction Expenses, including, as applicable, the Accounting Rules." A108. Based on the plain language of the definition of Closing Date Indebtedness, including the component definitions of Indebtedness, Group Companies, and Adjustment Time, Buyer included $109,049,000 to account for the SSI Debt in its Closing Statement. This sum was Closing Date Indebtedness as both "indebtedness ... for borrowed money" of the Company or its Subsidiaries and "obligations of the type referred to in clause[] (i) ... the payment of which such [Company] or its Subsidiaries is responsible or liable, directly or indirectly, as obligor, guarantor or surety." B14; A191–92.

Over the next few months, Seller's accountants requested documentation and information to support Buyer's calculations in its Closing Statement. B15. On September 9, 2022, after receiving the requested information and two extensions

from Buyer to either make its required payment or dispute the Closing Statement, Seller finally informed Buyer that it intended to dispute the inclusion of the SSI Debt as Closing Date Indebtedness (in addition to several other adjustments). B15; A828–34.

B. Procedural History.

1. The Arbitration Proceedings.

Under Section 1.4(e) of the EPA, all disputes between the Parties related to the purchase price adjustment process were to be submitted to an Accounting Referee. B15; A109. However, after significant discussion and negotiation, the Parties agreed to address "SSI Related Claims"[4] through binding arbitration before former-Vice Chancellor Slights, and to submit all remaining non-SSI Related Claims to an Accounting Referee for resolution. B15–16; A507–08. To effectuate that agreement, the Parties executed a Dispute Resolution Agreement. B16; A507. The Parties elected to retain former-Vice Chancellor Slights to serve as the Arbitrator for these proceedings and to apply Delaware law to their dispute. B16; A520.

Over the next few months, the Parties engaged in what the Chancery Court described as "a private equivalent of a Chancery proceeding." Appellant's Ex.A

[4] Under the Parties' Dispute Resolution Agreement, the "SSI Related Claims" encompass the Buyer SSI Debt Claim, Seller SSI Debt Objection, Seller SSI Rescission Claim, Seller SSI Current Asset Claim and Buyer SSI Disputes, as those terms are defined under the DRA. A507–08.

at 8. The Parties exchanged nearly 16,300 documents related to the sale of Save Mart, the SSI Debt, the Parties' negotiating history and the consummation of the Transaction. B18. Between May 24 and June 29, 2023, each Party deposed three witnesses, totaling more than 18 hours of deposition testimony. B19. After a status conference with the Arbitrator, the Parties further participated in a two-day hearing, in which an additional six hours of live testimony was elicited. B19, B23. The Parties then engaged in full pre- and post-hearing briefing and presented more than three hours of closing arguments. B23–26.

Throughout the Arbitration, Buyer maintained that this dispute could be resolved entirely by the plain language of the EPA, and that the SSI Debt clearly fit within the definition of Closing Date Indebtedness and the structure of the EPA. B11, B19–20, B25. Seller *agreed* that SSI Debt "could be made to fit within the definition of Indebtedness." B24; A1005. Seller argued, however, that Buyer's focus on the definition of Closing Date Indebtedness was "myopic" and that Buyer ignored alleged constraints on this term imposed by multiple other terms or provisions, including the Accounting Rules. B18; B20–21; B24.

Throughout its briefing before the Arbitrator, Seller also relied heavily on this Court's decision in *Chicago Bridge* to argue that Delaware courts favor an interpretation of a contract that "maintains the underlying economics of the parties' bargain" even where that interpretation is clearly at odds with the contract's

unambiguous text. B137; A1003. Seller separately pressed that extrinsic evidence proved that the SSI Debt should be excluded from the definition of Closing Date Indebtedness, despite pointing to no evidence showing that either Party manifested an intent to exclude the SSI Debt from the scope of Indebtedness. B22. Finally, Seller presented three equitable defenses based on mutual and unilateral mistake, bad faith and contractual "fairness." B22–23.

2. The Arbitration Award.

On September 5, 2023, former-Vice Chancellor Slights issued the Arbitration Award. Tethering his decision to the language of the EPA and well-established Delaware law, the Arbitrator explained: "Delaware courts will enforce the letter of the parties' contract without regard for whether they have struck a good deal or a bad deal." A49. Buyer, the Arbitrator concluded, "proffered the only reasonable construction" of the EPA's plain language. *Id*.

Former-Vice Chancellor Slights then proceeded to explain in detail why he found each of Seller's arguments unpersuasive. He spent nearly 12 pages assessing Seller's various arguments about the Accounting Rules. A68–80. He reviewed Section 1.4(d) "by clause" and determined that the Accounting Rules could not be construed to apply "all-encompassing[ly]" to all components of the Final Closing Date Purchase Price. A69–75. Instead, based on the provision's "as applicable" language, the only reasonable construction was that the Accounting Rules apply

where specified in the "definitions." A69–72. The Arbitrator further reasoned that, even if the Accounting Rules could be found to apply to Closing Date Indebtedness, including the SSI Debt within this definition did not constitute double counting. Therefore, Buyer did not violate the Parties' agreed-upon accounting principles or the historical accounting principles Save Mart previously followed in preparing its audited financial statements. A75–79; *see also* A107 (EPA § 1.4(a)); A206 (EPA Ex.A).

The Arbitrator spent four pages explaining why including the SSI Debt in the definition of Indebtedness did not invert the economics of the Transaction. A87–90. As he explained, Seller's argument focused on the adjustment for the SSI Debt in a vacuum. When considering the Transaction as a whole—including the fact that Seller swept $205 million in cash just days before the Transaction—it was clear that Seller "still received significant and meaningful consideration in exchange for its sale of the SSI Interest and Save Mart overall." A89–90. That, among other factual distinctions, made *Chicago Bridge* entirely inapposite. And it also revealed that the EPA was structured as a "cash free" and "debt free" transaction, under which Seller could "enjoy[] the benefit of the Acquisition being cash free" only if it also bore "the burden of the Acquisition being debt free." A88–89.

3. The Chancery Court Proceedings.

On September 7, 2023, two days after former Vice-Chancellor Slights issued the Arbitration Award, the Parties received the Accounting Referee's decision on the remaining adjustments. B29; A1051–78. Following the resolution of the two disputes, Seller owed Buyer $87,427,171. B29; B178–80. Under the Dispute Resolution Agreement, this payment was due on September 14, 2023. B30; A510. On that date, Seller informed Buyer that it would seek vacatur of the Arbitration Award. B30; B179. In response, Buyer moved to have the Award confirmed. B30. The Parties filed cross-motions for summary judgment in the Chancery Court, and oral argument was held on February 1, 2024.

The Chancery Court confirmed the Arbitration Award. The court acknowledged that Seller faced "an uphill climb" to prove that the Arbitrator manifestly disregarded the law because "review of an arbitration award is one of the narrowest standards of judicial review in all of American jurisprudence." Appellant's Ex.A at 6. The court found that Seller could not overcome this burden, particularly because the Arbitrator "diligently applied the law." *Id.* at 9. As the court explained, former-Vice Chancellor Slights's decision "flow[ed] entirely from the language of the Agreement, with particular emphasis on one definition in the Agreement." *Id.* at 10. And far from "flout[ing] the governing law," the court explained that the Arbitrator "followed many Delaware precedents that set out

principles of contract interpretation which, when applied strictly, support the result he reached." *Id.* Finally, the Chancery Court found that this Court's decision *Chicago Bridge* was inapposite. *Id.* *Chicago Bridge* centered on "an accountant" making an adjustment "contrary to the spirit of the agreement," whereas here, the dispute was resolved in "full-blown arbitration" by a former Vice Chancellor experienced in contract interpretation and Delaware law. *Id.* The Chancery Court concluded that the "concerns" motivating this Court's decision in *Chicago Bridge* did "not apply" here. *Id.*

On March 17, 2024, the Chancery Court entered its Final Order and Judgment, ordering Seller to pay Buyer $87,427,170.51, plus pre- and post-judgment interest at the legal rate. Appellant's Ex.B at 2, 5. On the same date, Buyer appealed the Chancery Court's Order to this Court.

ARGUMENT

A. Question Presented.

Whether the Chancery Court correctly confirmed former-Vice Chancellor Slights' Arbitration Award.

B. Scope of Review.

Although the Delaware Supreme Court "reviews a trial court's decision on cross-motions for summary judgment *de novo*, review of an arbitration award is one of the narrowest standards of judicial review in all of American jurisprudence." *SPX*, 94 A.3d at 750 (quotations and footnote omitted). Like the Chancery Court, the Supreme Court does "not sit to hear claims of factual or legal error by an arbitrator as an appellate court does in reviewing decisions of lower courts." *United Paperworkers Int'l Union v. Misco, Inc.*, 484 U.S. 29, 38 (1987). Instead, this Court must affirm the confirmation of the arbitrator's decision unless the party seeking vacatur can demonstrate that one of four narrow grounds for vacatur applies. *See* 9 U.S.C. §§ 9, 10(a)(1)–(4).[5]

Under Section 10(a)(4), a party can obtain vacatur of an arbitrator's decision if the arbitrator acted in "manifest disregard" of the law. *SPX*, 94 A.3d at 750. To prove that an arbitrator manifestly disregarded the law, the party must establish "that

[5] Seller raises no grounds other than manifest disregard, and therefore, any argument that the Arbitration Award must be vacated under Sections 10(a)(1)–(3) is waived. *See Rogers v. Christina Sch. Dist.*, 73 A.3d 1, 8 (Del. 2013).

the arbitrator (1) knew of [a] relevant legal principle, (2) appreciated that this principle controlled the outcome of the disputed issue and (3) nonetheless willfully flouted the governing law by refusing to apply it." *Id.* This standard is especially stringent in contract disputes, where the test "is not whether the arbitrator misconstrued the contract," but whether the arbitrator "consciously chose to ignore a legal principle, or contract term, that is so clear that it is not subject to reasonable debate." *Id.* at 747. Accordingly, a reviewing court is "confined to ascertaining" whether "the arbitrator's award draws its essence from the contract." *United Paperworkers*, 484 U.S. at 37 (quotations omitted). "[T]he sole question ... is whether the arbitrator (even arguably) interpreted the parties' contract, not whether he got its meaning right or wrong." *Oxford Health Plans LLC v. Sutter*, 569 U.S. 564, 569 (2013). Thus, a reviewing court must confirm the award, even if the "court is convinced that [the arbitrator] committed serious error," so long as the arbitrator has interpreted the parties' agreement. *SPX*, 94 A.3d at 751.

C. Merits of Argument.

Seller's arguments are dead on arrival. The Arbitration Award makes apparent that the Arbitrator interpreted the language of the EPA to render his decision. That the Arbitrator "interpreted the parties' contract" should be the beginning and the end of this Court's consideration of Seller's appeal. *Oxford Health Plans*, 569 U.S. at 569. Nonetheless, were this Court to reach Seller's merits-based arguments, they

too ultimately fail. *First*, the Arbitrator did not err in determining that the Accounting Rules did not apply to Closing Date Indebtedness, and moreover, that Buyer did not violate any Accounting Rules by including the SSI Debt as Closing Date Indebtedness. *Second*, the Arbitrator did not rely on extrinsic evidence to interpret an unambiguous contract, in contravention of Delaware law. *Third*, the Arbitrator did not ignore any settled Delaware law regarding the scope of post-closing adjustments. *Finally*, Seller's argument about whether the Chancery Court applied the correct standard of review is irrelevant to this Court's *de novo* review of the Arbitration Award.

1. The Arbitrator Interpreted the Equity Purchase Agreement in Issuing the Arbitration Award.

This Court should affirm the Chancery Court's confirmation of the Arbitration Award because the Arbitrator indisputably interpreted the EPA. The Arbitrator looked to Section 1.2 of the EPA—the provision which governs "the process for adjusting the $245 million 'Base Value' to determine the aggregate consideration paid by Buyer to Seller"—and walked through each component of that provision in his decision. A58–63. The Arbitrator noted that the definition of Closing Date Indebtedness unambiguously included the SSI Debt because the SSI Debt is "'Indebtedness,' as defined, held by one of the 'Group Companies' as of the 'Adjustment Time.'" A60. Having done so, he concluded that the EPA "is not ambiguous" and Buyer "proffered the only reasonable construction of the contract's

operative provisions." A49. Former-Vice Chancellor Slights then exhaustively reviewed Seller's various textual arguments. A64–94. There is no credible dispute that the Arbitrator came to his decision by interpreting the language of the EPA, and thus, no credible basis to assert that the Arbitrator manifestly disregarded the law.

Seller contends that the Arbitrator "disregard[ed] express textual restraints" in the EPA. Br.28. However, to show a manifest disregard of the law, Seller must establish that the Arbitrator "consciously chose to ignore a ... contract term[] that is so clear that it is not subject to reasonable debate." *SPX*, 94 A.3d at 747. Seller cannot meet this standard by arguing that the Arbitrator merely "misconstrued the contract." *Id.*

Seller argues that Section 1.4(d) imposed the Accounting Rules as a constraint on the calculation of Closing Date Indebtedness, and that the Arbitrator read this constraint out of the EPA. Br.28–29. But the Arbitration Award makes clear that former-Vice Chancellor Slights considered Section 1.4(d), the Accounting Rules, and Seller's arguments about the applicability and scope of both provisions in coming to his decision. The Arbitrator read the text of Section 1.4(d) and found that it "does not require universal application of the Accounting Rules to every calculation in the Closing Statement. Rather, the Closing Statement must incorporate the Accounting Rules only 'as applicable.'" A70–71. The Arbitrator also found that the definition of Closing Date Indebtedness "reveals that the

Accounting Rules are not applicable to that calculation, differentiating it from definitions like Working Capital, which specifically incorporate [the Accounting Rules]." *Id.*

Contrary to Seller's suggestion that the Arbitrator ignored a contract term, there is no genuine dispute that the Arbitrator determined that the Accounting Rules were inapplicable to the Parties' dispute by *interpreting* the language of the EPA. *Id*; *see also* Appellant's Ex.A at 9 ("The Arbitrator analyzed the Agreement as a whole and interpreted its language consistent with recent trends in Delaware law towards a highly contractarian jurisprudence."). Because the "sole question" before the Court "is whether the arbitrator (even arguably) interpreted the parties' contract, not whether he got its meaning right or wrong," *Oxford Health Plans*, 569 U.S. at 569, and because the Award shows that the Arbitrator did in fact engage with the provisions at issue and the EPA as a whole, this Court should affirm the Chancery Court's decision.

2. The Arbitrator Considered the Role of the Accounting Rules When Interpreting the Equity Purchase Agreement.

Seller proffers two ways in which the Arbitrator allegedly engaged in manifest disregard of law.[6] *First*, Seller argues that the Arbitrator erred in finding that the

[6] Seller claims "any liabilities of Save Mart or its Operating Subsidiaries ... must either (a) be included in the liability categories of the purchase price (such as Indebtedness) or (b) be scheduled in section 3.6 of the Disclosure Schedule." Br.14. The Arbitrator rejected this argument because listing the SSI Debt as an

Accounting Rules do not apply to the preparation of the Closing Statement under Section 1.4(d) of the EPA. Br.28. *Second*, Seller argues that two Accounting Rules—Agreed Principle 3 and the Historical Principles—barred Buyer from including the SSI Debt as Closing Date Indebtedness. *Id.* at 31–33, 35–36. Both arguments focus on the merits of the Parties' dispute and therefore should not be considered by this Court. But even if these arguments were appropriate at this stage, both are fatally flawed.

a. The Arbitrator did not misinterpret the words "as applicable" in Section 1.4 of the EPA.

To start, Seller is wrong that the Arbitrator "separated the definition of Indebtedness from the broader context of the EPA," and purportedly failed to provide a "cohesive interpretation that harmonizes and gives effect to the entire agreement." Br.29–30. The Arbitrator correctly placed Section 1.4(d) and the Accounting Rules in the context of Article I of the EPA and ensured that he was not interpreting Section 1.4(d) in a way that would "render other provisions in the EPA mere surplusage." A74–75. This is exactly what he was required to do under Delaware law. *See Kuhn Constr., Inc. v. Diamond State Port Corp.*, 990 A.2d 393, 396–97 (Del. 2010) (Delaware law requires courts to "read a contract as a whole

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Undisclosed Liability does not carve it out of the calculation of Indebtedness. A82–83; B106. Seller has waived this argument by not claiming error on this basis. *Rogers*, 73 A.3d at 8.

and ... give each provision and term effect, so as not to render any part of the contract mere surplusage").

As the Arbitrator explained, Section 1.4(d) states that the Closing Statement must be prepared "consistent with" the "definitions" of Working Capital, Closing Cash, Closing Date Indebtedness, and Transaction Expenses, and, where those definitions make them "applicable," the Accounting Rules. A71. This language, he concluded, indicates that "the parties understood ... the Accounting Rules will not always apply." *Id.* This interpretation is further supported by the fact that certain "definitions" in the EPA explicitly state that those components must be calculated in accordance with the Accounting Rules. A75–76.

For example, Working Capital states it must be calculated "strictly consistent with the Accounting Rules." A199. Closing Cash, which is the aggregate of all "Cash and Cash Equivalents," must also be calculated in accordance with the Accounting Rules. A185–86. Most notably, the definition of Gift Card Liability—itself a component of Indebtedness, and therefore of Closing Date Indebtedness—requires that it be "calculated consistent with the Accounting Rules." A190. Closing Date Indebtedness, however, does not state that it must be calculated in accordance with the Accounting Rules. Therefore, the Arbitrator reasonably concluded that the Accounting Rules do not apply to the calculation of this component of the Purchase Price. A74–76. Indeed, the Arbitrator found that this drafting pattern shows that the

"parties knew how to incorporate the Accounting Rules into a definition; where they did not, that decision should be respected." A76. To hold otherwise would read the Accounting Rules into provisions where they do not apply. And it would facilitate one "party's efforts to obtain rights it did not secure at the bargaining table," which Delaware courts refuse to do. *Hawkins v. Daniel*, 273 A.3d 792, 829 (Del. Ch. 2022), *aff'd*, 289 A.3d 631 (Del. 2023).

Seller separately argues that the phrase "as applicable" "makes clear that specific components of the Accounting Rules (*i.e.*, any one Agreed Principle or Historical Principle) may (or may not) apply to specific assets or liability items within the Closing Statement," and declares that "[a]ny other reading is unreasonable." Br.30–31. But Seller's interpretation is flawed for many reasons. It is not grounded in the text of Section 1.4(d), which does not reference any particular "assets or liability items." It creates surplusage issues throughout the EPA. And, because Seller never presented this interpretation to the Arbitrator, the Arbitrator cannot be said to have manifestly disregarded the law for not considering it.[7] At

[7] In its briefing to the Arbitrator, Seller argued that this language recognized that the Accounting Rules "may be silent on, or otherwise consistent with definitions, in certain cases," and that the second sentence of Section 1.4(d) nonetheless clarified that the Accounting Rules apply "without limitation" to all components of the Purchase Price Adjustment process. B163. Seller never presented its current interpretation to the Arbitrator. A party cannot argue for vacatur on grounds not raised before the Arbitrator. *E.g.*, *Evolve Growth Initiatives, LLC v.*

best, Seller's new interpretation is an alternative reading of Section 1.4(d). Because this Court is not empowered to adjudicate disputes about whether the Arbitrator's interpretation of a contract was "right or wrong," *Oxford Health Plans*, 569 U.S. at 569, this argument must also be rejected.

Seller's reliance on *Monongahela Valley Hospital Inc. v. United Steel Paper & Forestry Rubber Manufacturing Allied Industrial & Service Workers International Union AFL-CIO CLC*, 946 F.3d 195 (3d Cir. 2019), misses the mark. In *Monongahela*, the Third Circuit centered its analysis on the operative contract provision itself, whereas here, Seller presses the Court to look anywhere but the definition of Closing Date Indebtedness. The dispute in *Monongahela* concerned whether an employer hospital had ultimate discretion to approve requests for vacation time. *Id.* at 198. Accordingly, the arbitrator, the district court, and the Third Circuit focused their analysis on the provision in the employees' collective bargaining agreement which concerned the scheduling of vacation: "[v]acation will, *so far as possible*, be granted at times most desired by employees; *but* the *final* right to allow vacation periods, and the right to change vacation periods[,] is *exclusively* reserved to the Hospital." *Id.* at 197. The arbitrator concluded that the hospital did not hold ultimate authority, finding that "so far as possible" controlled the result. *Id.*

Equilibrium Health Sols. LLC, 2023 WL 4760547, at *13 (Del. Ch. July 26, 2023).

at 200. In holding that the arbitrator had "ignored [the CBA's] plain language," the Third Circuit observed that "so far as possible" meant that "the Hospital should consider in good faith the bargaining unit employees' preferences when exercising its final and exclusive right to determine vacation, but nothing more," and that the arbitrator's decision "flips the CBA on its head and grants the Union a near-categorical preference." *Id.*

Seller's position in this case is not analogous. In *Monongahela*, the arbitrator construed language in the operative provision in a manner which rendered subsequent language *in that same provision* meaningless. *Id.* at 198, 200. The Third Circuit, by contrast, interpreted the language in a way that gave meaning to all clauses within the operative provision. *Id.* at 200. Here, Seller does not contend that the Arbitrator misread any component of the operative definition of Closing Date Indebtedness. Instead, Seller claims that the Arbitrator placed an "isolated emphasis" on the phrase "as applicable" in Section 1.4(d). Br.35. Seller is wrong. The Arbitrator's analysis broke down the entirety of Section 1.4(d) "by clause" to ensure that no language in that provision or any related definitions became meaningless surplus. A72, A75–79. Unlike the arbitrator in *Monongahela*, former-Vice Chancellor Slights put the references to the Accounting Rules in Section 1.4(d) "in context" with the entirety of Article I and the larger EPA. *See* 946 F.3d at 200.

b. The Arbitrator did not err in determining that Buyer did not violate any Accounting Rules by including the SSI Debt as Closing Date Indebtedness.

Even if the Accounting Rules are applicable to the calculation of Closing Date Indebtedness, the inclusion of the SSI Debt in Closing Date Indebtedness does not violate the Accounting Rules. This, too, was addressed by the Arbitrator in his decision. A76–79. Seller claims that the inclusion of the SSI Debt violated two specific Accounting Rules: Agreed Principle 3's bar on "double counting," and the Historical Principles' bar on using new "accounting principles or classifications" to prepare the Closing Statement. Br.35–36. Both arguments lack merit.

As an initial matter, including the SSI Debt as Closing Date Indebtedness does not constitute "double counting." Seller states throughout its brief that the $90 million SSI Purchase Price accounted for the SSI Debt. But no one—not the Arbitrator, and not Vice Chancellor Laster—has made this (incorrect) factual finding.[8] Rather, the Arbitrator found that, by its plain language, the SSI Purchase Price did *not* account for the SSI Debt. As he explained, the term "aggregate," which appears in the definition of SSI Purchase Price and 31 other times throughout the

[8] Seller claims that the Court of Chancery found that the SSI Debt was already accounted for in the SSI Purchase Price. Br.35. Not so. Although the Court of Chancery recognized that Seller "historically carried the GP interest as an equity investment," it heard no evidence on the point and did not actually consider whether that interest was reflected in the SSI Purchase Price. Appellant's Ex.A at 4–5.

EPA, is best understood to mean "total," not "net." A65–67. Because "the same phrase should be given the same meaning when it is used in different places in the same contract," *Giesecke+Devrient Mobile Sec. Am., Inc. v. Nxt-ID, Inc.*, 2021 WL 982597, at *10 (Del. Ch. Mar. 16, 2021), the Arbitrator concluded that the SSI Purchase Price only reflected the "total" portion of the Base Value that was allocated to the separate acquisition of SSI.

The Arbitrator's interpretation of "aggregate" accords with how the EPA accounts for the SSI Purchase Price. The Parties agreed to a Base Value of $245 million for the Transaction. A106; Br.1. The EPA, as amended, states that the SSI Purchase Price is deducted from the Base Value. A106. Closing Date Indebtedness is deducted from the Base Value. *Id.* That means the Base Value is not net of Closing Date Indebtedness. Instead, both the SSI Purchase Price and Closing Date Indebtedness are separate components deducted from the Base Value to arrive at the Estimated Purchase Price. If the Parties intended the SSI Purchase Price to be a total that accounted for any Closing Date Indebtedness, the SSI Purchase Price would have been deducted from the Estimated Purchase Price, not the Base Value. Thus, even assuming Agreed Principle 3 applied to Closing Date Indebtedness, it cannot be "double counting" to deduct the SSI Debt as Closing Date Indebtedness because the SSI Debt was not "counted" within the SSI Purchase Price in the first place.

Additionally, including the SSI Debt in Closing Date Indebtedness does not "reclassify" the SSI Debt. The EPA defines the Historical Principles as "the accounting principles, methods, and practices used in preparing the audited Company Financial Statements dated December 27, 2020." A184. Seller argues that including the SSI Debt as Closing Date Indebtedness violates this provision because the SSI Debt was not classified as "long term debt" by Save Mart in its financial statement. Br.36.[9] But this argument misconstrues what "classification" means. "Classification" is an accounting term that refers to how certain items are identified on the balance sheet—in particular, as either assets or liabilities. A199. Changing how certain items are classified could impact how components like Working Capital are calculated and, therefore, making classification changes is explicitly barred by the EPA. A108; A199. In contrast, Closing Date Indebtedness is calculated by compiling existing and known loan balances using the definition in Section 1.4(d). By including the SSI Debt in the calculation of Closing Date Indebtedness, Buyer merely followed Section 1.4(d)'s instructions and totaled all items that fell within the defined term. Because no "accounting" was required, there was no "reclassification" of anything within Save Mart's financial statements.

[9] Notably, there is nothing within the definition of Closing Date Indebtedness or Indebtedness that limits those terms to items classified as "long term debt" on Save Mart's financial statements. *See generally* A79; A186; A191–92.

In rejecting Seller's argument about the construction of the Accounting Rules, the Arbitrator applied well-accepted principles of Delaware law, fully considered all of the provisions that Seller claims he ignored and tied his reasoning to the very text of the EPA. Seller's argument is "in essence a mere disagreement with the arbitrator's findings and conclusions"—that is, an attempt to re-litigate the merits of this argument under the auspices of the manifest disregard standard. *Anoruo v. Tenet HealthSystem Hahnemann*, 697 F. App'x 110, 112 (3d Cir. 2017). That is not "a proper basis on which to vacate an arbitration award" under the FAA. *Id.*; *see also Falcon Steel Co. v. HCB Contractors, Inc.*, 1991 WL 50139, at *2 (Del. Ch. Apr. 4, 1991) ("[A] reviewing court is prohibited from considering the merits of the dispute submitted to the Arbitrator."). Seller's argument must be rejected.

3. The Arbitrator Did Not Rely on Extrinsic Evidence to Interpret the Unambiguous Terms of the EPA.

Seller next argues that vacatur is appropriate because the Arbitrator improperly and "selectively" relied on extrinsic evidence, in violation of Delaware law. Br.36. Far from "refus[ing]" or "ignoring" the parol evidence rule, the Arbitrator explicitly and correctly recognized that the EPA's language was "clear and unambiguous ... as written" and he could *not* rely on extrinsic evidence. A49; *see* A50 n.1. ("[E]xtrinsic evidence has not informed my construction of the purchase agreement."); A55 ("I conclude the SSI Debt unambiguously falls within the EPA's definition of 'Closing Date Indebtedness,' .... Therefore, I have no basis

to consider extrinsic evidence or otherwise depart from the four corners of the EPA."). The Arbitrator appropriately limited his analysis to the four corners of the EPA.

Despite the Arbitrator's clear explanation, Seller claims that the Arbitrator must have nonetheless relied on extrinsic evidence because "[the Arbitrator] based his interpretation on the notion the parties intended 'a cash free and debt free transaction,'" and the phrase "cash free and debt free" appears only in extrinsic evidence. Br.36. Seller's claim is baseless. As the Arbitrator explained, "[o]n its face, the EPA contemplates a cash free and debt free transaction. It accomplishes this in two ways: (1) by allowing Seller to sweep its accounts of cash prior to Closing, and (2) by allowing Buyer to adjust the purchase price down to account for debt." A88 (citing to EPA §§ 1.2 and 6.1.) He did not cite to or rely on any extrinsic evidence that may also have contained this phrase. Instead, as the Arbitrator explained, he arrived at this conclusion based on the "structure" of the EPA. *Id*.

Seller presents no reasonable evidence or viable argument that the Arbitrator actually relied on extrinsic evidence. However, even if Arbitrator's determination relied on extrinsic evidence, the Arbitration Award must be upheld so long as "any grounds for the award can be inferred from the facts on the record." *TD Ameritrade, Inc. v. McLaughlin, Piven, Vogel Sec. Inc.*, 953 A.2d at 726, 733 (Del. Ch. 2008) (quotations omitted). Because the Arbitrator expressly relied on the EPA itself to

conclude that the EPA intended to memorialize a "cash free debt free" transaction, this basis for vacatur should also be rejected.

4. The Arbitrator Did Not Manifestly Disregard Any Settled Delaware Law Regarding Post-Closing Adjustments.

Seller next argues that former-Vice Chancellor Slights manifestly disregarded the law because his ruling contravenes settled Delaware law that post-closing adjustments should not invert the economics of a transaction. Br.1, 4, 6, 38–41. Seller's insistence that *Chicago Bridge* mandates vacatur of the Arbitrator's Award is wholly unavailing. Despite repeatedly insisting that the Arbitration Award inverted the economics of the Transaction, Seller cites no law for the proposition that this Court should reverse the Chancery Court due to equitable considerations. Moreover, Delaware courts have consistently held that, when arbitrators are presented with conflicting arguments and authority, "arbitrators [may] ultimately [choose] not to follow the cases cited by [a party]." *TD Ameritrade*, 953 A.2d at 738. And even if the Arbitrator, from this Court's perspective, "erroneously" rejected those cases, his decision is not in "manifest disregard of the law." *Id*.

Here, the Arbitrator spent four pages of the Arbitration Award thoughtfully considering and rejecting Seller's arguments about *Chicago Bridge*. A87–A90. The Arbitrator explained that it was actually *Seller's* proffered interpretation of the EPA, which "ignore[d] the overall context of the Acquisition, and in doing so, the critical teaching of *Chicago Bridge*." A89. He then explained that *Chicago Bridge* was

"readily distinguishable" and that including the SSI Debt as Closing Date Indebtedness does not invert the economics of the Transaction because, when reviewing the context of the entire sale of Save Mart, it is clear that Seller received "significant and meaningful consideration." A89–90. That finding was well supported, given the $1.15 billion in proceeds received for the Sale Leaseback and the $205 million in cash swept before the Closing. The Arbitrator cannot be credibly accused of manifestly disregarding the very law that he considered and analyzed.

Although the Court need not conduct its own analysis of *Chicago Bridge* to affirm the Chancery Court's decision, an examination of that case proves that the Arbitrator's determination was correct. *Chicago Bridge* involved a dispute between Chicago Bridge & Iron Company, one the one hand, and Westinghouse Electronic Company, on the other hand, regarding the interpretation of a purchase price adjustment provision in the agreement effectuating the sale of Chicago Bridge's subsidiary to Westinghouse. *See* 166 A.3d at 914. In that case, the parties set the purchase price at zero dollars. *Id.* at 915–16. In exchange, Chicago Bridge could walk away from the spiraling costs of a nuclear power-plant project. *Id.* at 923. Westinghouse also agreed that its sole remedy for breaches of representations and warranties would be to refuse to close and that absent fraud, Chicago Bridge would not have any liability for monetary damages post-closing (the "Liability Bar"). *Id.* at 920–21. The parties' purchase agreement also contained a true-up provision

which provided that Chicago Bridge's closing statement must be prepared in accordance with "generally accepted accounting principles" ("GAAP"). *Id.* at 928–29. During the true-up process, Westinghouse asserted that Chicago Bridge owed them nearly $2 billion because Chicago Bridge's historical financial statements were not prepared in accordance with GAAP. *Id.* at 915.

This Court rejected Westinghouse's requested adjustment, finding that the language of the true-up provision had been "tailored to address issues that might come up if Chicago Bridge tried to change accounting practices midway through the transaction or if it stopped work on the projects, rather than continue to invest as expected." *Id.* at 916. The Court also noted that, if Westinghouse had tried to bring its claim as a breach of Chicago Bridge's representations, then the claim would have been prohibited By the Liability Bar. In rejecting Westinghouse's interpretation, the Court found that given the purpose of the parties' purchase agreement, the Liability Bar must be read to bar claims that could have been brought as breaches of representations and warranties from being raised as a part of the true-up process. *Id.* at 932–33.

The facts of this dispute could not be more different. The parties in *Chicago Bridge* chose to enter into an agreement with unusual provisions, including the zero-dollar purchase price and the Liability Bar. By contrast, this dispute centers around a routine acquisition of a struggling commercial business by a private-equity firm

pursuant to a standard purchase agreement and a customary purchase price adjustment provision. The decision in *Chicago Bridge* also turned on the scope of the parties' Liability Bar, which the court determined limited Westinghouse's post-closing remedies against Chicago Bridge. Here, Seller's dispute is not about whether Buyer could *make* post-closing adjustments but about the *amount* of that adjustment. Notably, Seller could have insisted on a purchase price adjustment cap but did not do so. B103–04. Because *Chicago Bridge* is plainly distinguishable from the present case, the Arbitrator was correct to find that it doesn't control the outcome of this dispute.

Including the SSI Debt also does *not* invert the economics of the Transaction or involve "a rewriting of the contract." *Chicago Bridge*, 166 A.3d at 928. Seller received meaningful consideration in exchange for its sale of the Company, regardless of the deduction of the SSI Debt. Seller sold Save Mart in two phases. *See* Counterstatement of Facts, *supra*, at 9–11. In the first phase, Seller executed the Sale-Leaseback, which earned Seller more than $1.15 billion and burdened the Company with tens of millions of dollars in ongoing rent obligations. In the second phase, Seller sold the rent-burdened Company to Buyer.[10] Before Closing, taking

[10] Under Delaware's Step Transaction Doctrine, both of these phases should be considered together because "the steps in a series of formally separate but related transactions involving the transfer of property [are treated] as a single transaction, if all the steps are substantially linked." *Noddings Inv. Grp., Inc. v. Capstar*

advantage of the fact that the Transaction was structured as a cash-free, debt-free deal, Seller swept $205 million out of the business to itself, which allowed Seller to enjoy the economic benefit of the Group Companies' cash. A88. In total, Seller was able to walk away from the Company and its outstanding liabilities and pocket more than $1 billion in the process. As the Arbitrator noted, this was "significant and meaningful consideration." A89–A90.

Seller relies on *Westmoreland Coal Co. v. Entech, Inc.*, 100 N.Y.2d 352 (2003), and *OSI Systems, Inc. v. Instrumentarium Corp.*, 892 A.2d 1086 (Del. Ch. 2006), to support its argument that courts reject post-closing adjustments that invert the economics of a transaction. Br.39–40. But these cases offer no support to Seller.

Westmoreland required the court to decide whether the parties' claims should be resolved in arbitration or in court. 100 N.Y. 2d at 360. The *Westmoreland* court did *not* decide whether the buyer was entitled to the requested adjustment or whether the adjustments to the closing statement would have violated GAAP. *Id.* *OSI* is similarly inapplicable because the court was simply to deciding the appropriate forum for the parties to litigate their purchase price adjustment dispute. 892 A.2d at 1087. The *OSI* court explicitly emphasized that the case did "not arise because of

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Commc'ns, Inc., 1999 WL 182568, at *6 (Del. Ch. Mar. 24, 1999) (quotations omitted), *aff'd*, 741 A.2d 16 (Del. 1999) (TABLE); *see also* Counterstatement of Facts, *supra*; B181–90; A2516–17 at 21:17–22:4.

the magnitude of the Closing Adjustment that OSI calculates." *Id.* at 1089. The *OSI* court held that the parties' dispute should be resolved in arbitration, but never decided whether the buyer was entitled to their requested adjustment. *Id.* at 1095.

The Arbitrator was entitled to reject Seller's arguments on the inversion of the economics and distinguish its proffered cases, without manifestly disregarding the law. A closer examination reveals that he properly distinguished Seller's cases because they are, in fact, inapposite.

5. The Chancery Court Did Not Exercise Excessive Deference to the Arbitration Award.

Finally, Seller contends that the Chancery Court misapplied Delaware law on reviewing arbitration awards and "failed to recognize [that] the Arbitrator disregarded the Accounting Rules[] and disregard[ed] the terms of a contract" "[b]y focusing on the Arbitrator's analysis of the isolated definition of Indebtedness." Br.7. Seller's argument fails to present a valid basis for vacatur.

To start, Seller's arguments regarding the Chancery Court's reasoning are not relevant to this Court's *de novo* review. Any purported flaws in the Chancery Court's analysis are immaterial to whether the *Arbitrator* acted in manifest disregard of the law in his Arbitration Award—the only question before this Court. Seller's complaint that the Chancery Court did not discuss "the import of section 1.4(d)," *id.* at 43, is irrelevant. The Arbitrator dedicated an entire section of the Arbitration Award to it. A68 ("After review of the relevant provisions, I am satisfied the parties

did not agree to apply the Accounting Rules to the calculation of Closing Date Indebtedness. And even if the Accounting Rules applied, it does not appear that Buyer's Closing Date Indebtedness calculation would violate them.").

Seller also argues that the Chancery Court misapplied this Court's ruling in *SPX*. Br.41. According to Seller, Vice Chancellor Laster failed to appreciate that, in *SPX*, this Court held that the arbitrator did not manifestly disregard of the language of the disputed contract because the contract had "two colorable interpretations," whereas here, "only [Seller's] interpretation ... fit[s] the text of the EPA." *Id*. at 7, 42. But this is an about-face from Seller's position in the Arbitration, where Seller acknowledged that "the SSI Debt falls within the definition of Closing Date Indebtedness." A64. Seller's own concession makes plain that neither the Chancery Court nor the Arbitrator failed to correctly apply or consider *SPX*.

Judicial review of arbitration awards is "one of the narrowest standards of judicial review in all of American jurisprudence." *SPX*, 94 A.3d at 750 (quotations omitted). As the Arbitrator emphasized in his Arbitration Award, "the parties contractually invoked Delaware law and that election is consequential." A49. So, too, is the Parties' election of arbitration as the forum for adjudicating this dispute. Delaware courts have consistently recognized that the results of arbitration are "nearly impervious to judicial oversight." *Evolve Growth*, 2023 WL 4760547, at *10 (quotations omitted). And "Delaware courts will enforce the letter of the parties'

contract without regard for whether they have struck a good deal or bad deal." A49; *accord Arwood v. AW Site Servs., LLC*, 2022 WL 705841, at *29 (Del. Ch. Mar. 9, 2022). Seller chose to submit this dispute to the arbitration process. A236–39. That Seller now regrets the results of the dispute resolution process it chose does not warrant vacatur of the Arbitration Award.

CONCLUSION

For the foregoing reasons, the judgment of the Chancery Court should be affirmed.

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