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Case Number 315,2024

IN THE

Supreme Court of the State of Delaware

EDWARD LEE, MATTHEW DURGIN, JAEWOO HWANG, RONALD WASINGER, ADAM SEXTON, CHRIS JO, and ZENITH ELECTRONICS LLC,

Defendants-Below,
Appellants,

v.

ASHISH CHORDIA, LAMPROS KALAMPOUKAS, RAGHU KODIGE, RAVI SARMA, RICHARD ANDRADES, ASHISH BALDUA, JOHN GEE, KAJAL VIBHAKAR, THE SHAOIE CHAN CHORDIA GST TRUST, THE SAMAY KODIGE GST TRUST, and THE VEVAAN KODIGE GST TRUST,

Plaintiffs-Below,
Appellees,

and

ALPHONSO INC., a Delaware Corporation,

Nominal Defendant-Below,
Appellee.

No. 315, 2024

CASE BELOW:

COURT OF CHANCERY OF THE STATE OF DELAWARE,
C.A. No. 2023-0382-NAC

APPELLEES' ANSWERING BRIEF

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NATURE OF PROCEEDINGS

This appeal concerns the Court of Chancery's post-trial decision preventing the bad-faith scheme of LG[1]—the controlling stockholder of Alphonso Inc. ("Alphonso")—to eviscerate the contractually bargained-for rights of Alphonso's minority stockholders, squeeze them out at a fraction of Alphonso's true value, and seize unfettered control over Alphonso.

In December 2020, Alphonso and its stockholders sold a controlling interest in Alphonso to LG. In exchange, certain of Alphonso's largest stockholders, founders, and senior executives (the "Key Holders") negotiated for minority liquidity and governance rights, memorialized in a stockholders' agreement entered into with LG and Alphonso, concurrently with LG's investment (the "Stockholders' Agreement" or "SHA"). As part of that agreement, the Key Holders obtained the right to designate to Alphonso's board three "Common Directors" to provide minority representation and exercise certain veto rights to protect minority stockholders. The parties also included a provision that expressly requires Alphonso—and by extension LG—to use "reasonable efforts" to ensure that these

[1] Except where greater specificity is warranted, LG Electronics, Inc. ("LGE") and its wholly owned subsidiary Zenith Electronics LLC ("Zenith") are referred to together herein as "LG," consistent with the Court of Chancery's findings that LGE controlled and directed the Zenith actions at issue. *See, e.g.*, Op. 3-4, 12, 82.

(and other) contractual rights are "effective" and that the Key Holders enjoy the "benefits" of the Stockholders' Agreement.

On December 16, 2022, Defendants—LG and the four Alphonso directors it designated (the "LG-Affiliated Directors")—launched an "LG-led coup" dubbed "Project Wall-E." Op. 29, 42.[2] Specifically, Defendants fired the individual Key Holders and removed the Common Directors in a plot to gut the Key Holders' contractual rights and ultimately terminate the Stockholders' Agreement entirely, because LG "wanted a better deal than the one it had bargained for." *Id.* at 28.

Plaintiffs—certain Key Holders and other terminated employees—sued, seeking a declaration under 8 *Del. C.* § 225 that the Common Directors' removal was invalid because, among other reasons, it was procured by Alphonso's breach of its "reasonable efforts" obligations under the Stockholders' Agreement.

Following extensive discovery and a two-day trial, the Court of Chancery (the "Trial Court") issued a 102-page Memorandum Opinion in Plaintiffs' favor, crediting nearly all of Plaintiffs' factual narrative and holding that Alphonso breached its efforts obligation. Op. 52-88. Far from making "reasonable efforts" to uphold the Key Holders' right to designate the Common Directors, Alphonso, at LG's behest, "actively and affirmatively torpedo[ed]" that right when, for the

[2] "Op." refers to the opinion below, attached as Exhibit A to Defendants' Opening Brief ("Br.").

express purpose of eliminating the right, Alphonso's CEO fired the two non-officer Key Holders—i.e., Ravi Sarma and Richard Andrades. *Id.* at 76-77, 80-81. As a remedy, the Trial Court held that Andrades and Sarma retained their director-designation right and invalidated the consent purporting to remove the Common Directors.

On January 9, 2024, the Trial Court issued an Order entering judgment in Plaintiffs' favor on their Section 225 claim. Defendants appealed and filed their Opening Brief on September 24, 2024. This is Plaintiffs' Answering Brief.

SUMMARY OF ARGUMENT

1. Denied. The Trial Court correctly held that Alphonso breached its obligation under Section 12.1 of the Stockholders' Agreement to use "reasonable efforts" to uphold Andrades's and Sarma's right to designate Common Directors when Alphonso's interim CEO fired them to eliminate that right. Op. 81. Defendants' arguments on appeal fail.

First, Defendants wrongly contend that Section 12.1's "plain language … only requires Alphonso to take actions *after* the Parties *exercise* their rights." Br. 24 (emphasis added); *id.* at Point I.C.1. That interpretation improperly rewrites Section 12.1, which requires Alphonso to ensure that the rights "granted" under the agreement are "effective" and that the parties "enjoy the benefits" of the agreement.

Second, although Section 12.1 is unambiguous, Defendants improperly rely on extrinsic evidence to argue that the Trial Court's interpretation violates the parties' understanding that the Key Holders were "at-will" employees. Br. 24; *id.* at Point I.C.2. Regardless, even if extrinsic evidence is considered, there is no evidence that the parties intended for LG to have the right to terminate the Key Holders for the purpose of eliminating their contractual rights, including the Director-Designation Right. Indeed, Defendants' position would give LG the right not only to eviscerate the Director-Designation Right unilaterally but also to terminate the *entire* Stockholders' Agreement, rendering the agreement wholly illusory. Op. 73

& n.329. That was not, and could not have been, the parties' intent, and Delaware courts do not interpret contracts to reach such absurd results.

2. Denied. Having found a breach of Section 12.1, the Trial Court correctly held, under the prevention doctrine, that Andrades and Sarma retained their designation right and invalidated the December stockholder consent purporting to remove the Common Directors (the "Consent"). Op. 95-102. Defendants' argument that the Trial Court could not apply a remedy "as to" Zenith/LGE because it was not the "breaching party," Br. 38-40, ignores that LG controlled Alphonso. Regardless, it is unsupported by authority and misconstrues what the Trial Court did. Defendants' argument that the "assumption of risk" exception applies, *id.* at 40-45, likewise fails because, among other things, the Key Holders did not assume the risk that they would be fired for the very purpose of eliminating their contractual rights. And irrespective of the prevention doctrine's applicability, the Trial Court was well within its equitable authority under Section 225 to invalidate the Consent.

3. The Consent's invalidation can also be affirmed on two alternative grounds briefed by the parties but not decided below. First, the Consent was procured by a breach of the implied covenant in the Stockholders' Agreement, which precluded LG from eliminating the Key Holders' rights by firing them for that purpose. A0296-306. Second, the Consent fails Delaware's "twice-tested" review because it was the result of an inequitable, bad-faith scheme. A0307-09.

STATEMENT OF FACTS

A. LG Acquires Control of Alphonso, Subject to Minority Rights Set Forth in a Stockholders' Agreement

Plaintiffs are founders and former employees of Alphonso, a Delaware corporation that sells advertising on smart TVs using proprietary technology. Op. 2-3.

In December 2020, LGE, through Zenith, purchased a controlling stake in Alphonso, investing roughly $78 million at $11.09 per share in exchange for a 55% ownership interest in Alphonso (subsequently reduced to 50.1% on a fully diluted basis). *Id*. at 13.[3]

In exchange for selling control, Alphonso's stockholders received upfront cash, and the Key Holders obtained certain minority-wide liquidity rights to ensure minority stockholders could ultimately sell their remaining equity at fair value, and certain governance rights designed to protect those liquidity rights and ensure that Alphonso continued to be managed in the best interests of all stockholders. *See id*. at 8, 12. These rights—memorialized in the Stockholders' Agreement—were

[3] LG's willingness to invest at a $110 million pre-money valuation, Op. 13, belies Defendants' claim that Alphonso was "struggl[ing]" when LG invested, Br. 8.

critical to the decision to sell control. *Id.* at 7-8, 12-13; A1830-31 (Kodige Tr. at 207:1-12); A0886 (Beotra Dep. Tr. at 353:21-24).[4]

The liquidity rights include (i) LG's obligation to conduct three scheduled tender offers, beginning in March 2024, for minority stockholders' equity, and (ii) the Key Holders' right to demand an Alphonso IPO, starting in December 2023. Op. 8-9; A3587 (SHA § 9); A3601 (SHA § 11). The governance rights include the right of the "Employee Key Holders"—Key Holders who are directors, officers, or employees of Alphonso—to designate up to three Common Directors to Alphonso's board of directors (the "Board") (the "Director-Designation Right") and the right of the Common Directors, in turn, to prevent LG from taking certain actions to interfere with minority stockholders' liquidity rights or otherwise harm the value of their equity. Op. 12-13; A3579-80 (SHA § 6.2); A3597 (SHA § 10.2(b)).[5]

The Stockholders' Agreement provides that the Director-Designation Right would be "null and void" if no Key Holder serves as an Alphonso officer or

[4] The Key Holders are Plaintiffs Ashish Chordia, Lampros Kalampoukas, Raghu Kodige, Ravi Sarma, Richard Andrades, and Ashish Baldua, three Plaintiff trusts, and non-Plaintiffs Sandeep Beotra, Manish Gupta, and Narendra Sirugudi. A0226 (Pre-Trial Order ¶ 23). Post-closing, the Key Holders retained significant equity stakes in Alphonso. *See* A3626-27 (SHA Exs. A, B).

[5] For example, a Common Director must approve (i) related-party transactions between Alphonso and LG; (ii) delaying Alphonso's IPO beyond December 2025; (iii) postponing or modifying the tender offers; and (iv) setting fair market value for the tender offers. Op. 12; A3601-02 (SHA §§ 10.5(d)(ii), (iv), (v), 11.2(a)).

employee (the "Designation Condition"). *See* Op. 10, 73 n.329; A3597 (SHA § 10.2(b)). A similar condition applies to the Key Holders' right to approve any amendment or termination of the agreement. *See* Op. 11, 73 n.329, 81 n.362; A3604 (SHA § 13.1(b)(iii)); A3608 (SHA § 13.8).

The trial record, including testimony from LG's lead negotiator, confirms that the Designation Condition was added to ensure that Key Holders had "skin in the game"—i.e., incentive to *stay* at Alphonso and build value. Op. 10 n.48 (quoting A1066-67 (Hahm Dep. Tr. at 94:25-95:13)). No party believed during negotiations that LG could cause Alphonso to fire the Key Holders for the purpose of defeating the Designation Condition and eviscerating the Key Holders' contractual rights. Such a result would be absurd because, as the Trial Court found, it would render the Director-Designation Right and, indeed, the entire Stockholders' Agreement illusory. Op. 73 & n.329. It would also be inconsistent with Section 12.1, which required Alphonso to use "reasonable efforts … to ensure that the rights granted under this Agreement are effective and that the Parties enjoy the benefits of this Agreement." A3602 (SHA § 12.1).

B. Alphonso Achieves Enormous Success Under the Key Holders' Leadership

Post-closing, Alphonso thrived under the Key Holders' leadership. Op. 28. By December 2022, LG internally valued Alphonso at $700 million to $1.4 billion—multiples higher than when LG invested. *Id.*

C. Friction Arises Between Certain Key Holders and LG

Notwithstanding Alphonso's success, friction arose between LG and Alphonso's management—specifically, Chordia and Kodige[6]—due, in part, to "an overarching clash between LG[]'s relatively buttoned down, hierarchical culture and Alphonso's horizontal startup culture." Op. 14, 16-27; Br. 17-18.

On appeal, citing the same emails (which long predated Plaintiffs' terminations) and testimony from former LG-Affiliated Director Ron Wasinger cited at trial (which the Trial Court discredited), Defendants claim that Chordia and Kodige engaged in "repeated 'unprofessional behavior' that utterly frustrated LG's bargained-for right to control" and resulted in an "avalanche of dysfunction" that affected Alphonso's ability to operate." Br. 17-18. But the Trial Court rejected "the notion that the Board was gridlocked in any meaningful way," including "because the LG-Affiliated Directors controlled a majority of the Board seats." Op. 27 & n.130. The Trial Court also rejected LG's "drumbeat evidentiary presentation on Chordia and Kodige's rough manner, and Wasinger's testimony in particular" as "overreaching and intended more to 'poison the well' than anything else." *Id*. at 27 n.130. While Chordia and Kodige often took the "least diplomatic" approach to

[6] Chordia was Alphonso's CEO when LG invested in December 2020; Kodige assumed the role after Chordia resigned in July 2021. Op. 17. Both were Common Directors during the relevant period.

resolving conflict, they were "by no means the first entrepreneurs who have sought to 'move fast and break things' and be quite successful in doing so." *Id.*

LG's narrative also elides the friction caused by its own desire, in breach of its fiduciary duties as Alphonso's controller, to treat Alphonso as a wholly owned subsidiary without regard to Alphonso's interests. For example, LG pressured Alphonso management to retroactively amend the pricing terms of an inventory agreement between the companies, which was finalized just months earlier. Op. 22-24. LG's internal documents acknowledged that it was motivated by a desire to "mov[e] … profits" from Alphonso to LG. B044. But LG recognized that doing so would violate Defendants' fiduciary obligations to Alphonso and thus contrived to "[a]pproach the matter as a compliance risk issue." Op. 24 (quoting B024). LG's proposal was so clearly adverse to Alphonso that even an LG-Affiliated Director called it a "terrible" and "dumb idea" that "no leader of Alphonso should agree to," *id*. at 23, though that did not stop LG from trying and later scheming to terminate the Stockholders' Agreement altogether.[7]

[7] The Common Directors' right to veto related-party transactions prevented LG from amending transfer pricing unilaterally. A3601 (SHA § 10.5(d)-(iv)).

D. Defendants Plot "Project Wall-E" to Eliminate the Bargained-For Minority Rights and Seize Unfettered Control Over Alphonso

Not long after signing the Stockholders' Agreement, LG decided it "wanted a better deal than the one it had bargained for," Op. 28, and, thus, Defendants developed "Project Wall-E."

A key impetus of Project Wall-E was LG's desire to evade its contractual commitments with respect to the Key Holders' IPO rights. Starting in spring 2022—when Defendant Chris Jo took over the LG division overseeing Alphonso—LG became "less accommodating" and "sought strategic flexibility" regarding a potential Alphonso IPO. Op. 15, 29. In April 2022, Jo revealed to Alphonso management that LG was "wavering on the idea of an IPO," notwithstanding "the commitment to an IPO that LG[] had communicated to the Key Holders the year prior." *Id.* at 29.

In June 2022, Defendants began exploring ways to terminate the Stockholders' Agreement to "avoid their obligations to the Key Holders," *id.* at 33, which evolved into Project Wall-E by fall 2022. As the Trial Court found, Project Wall-E was "undertaken for the purpose of eviscerating the Key Holders' liquidity rights and the limited protections they had negotiated of those rights." *Id.* at 35, 88.

LG's plan "was to fire all Key Holders for the express purpose of terminating the Director-Designation Right" (by triggering non-occurrence of the Designation Condition) "and then terminating the Stockholders' Agreement altogether" (relying

on the similar condition on the Key Holders' right to approve any termination). *Id.* at 88. LG considered, but rejected, alternative options because they would have allowed "Alphonso-friendly" Common Directors to remain on the Board and the Key Holders to "exercise their right to request for S-1 [i.e., IPO] filing." *Id*. at 36 (quoting B074). By terminating *all* Key Holders, by contrast, LG believed it could eliminate (i) the Director-Designation Right so Alphonso's Board would "run with only LG[]-designated board members"; and (ii) LG's "IPO and tender offer obligation" by "terminat[ing] the Shareholders Agreement." *Id*. (quoting B074).

Despite an overwhelming documentary record, Defendants disputed at trial their intent to terminate the Stockholders' Agreement. *Id.* at 88. After "assess[ing] the credibility of each witness carefully," however, the Trial Court rejected that testimony as contradicted by Defendants' own documents. *Id.* at 41-42, 88. The only question was "'*when*' Zenith and LGE would terminate the Stockholders' Agreement … not '*if*' they would." *Id.* at 88 (emphasis added).

The Stockholders' Agreement provided the Board exclusive authority to hire and fire "executive officers," which described most of the Key Holders, but did not authorize the Board to fire the two non-officer Key Holders—Andrades and Sarma, *id.* at 39, 56; A3600 (SHA § 10.5(c))—which was essential to triggering the failure of the Designation Condition. Thus, Defendants needed to hire a new interim Alphonso CEO "to do the dirty work [Alphonso's Board] could not," Op. 39, 76.

After first approaching an Alphonso executive, who declined because he would "not be able to sleep at night" after "stab[bing] [Plaintiffs in] their back," *id*. at 39-40, the LG-Affiliated Directors offered the job to Adam Sexton, whose primary qualification was that he was "dumb and easy to control" and was viewed as "fully tractable." *Id.* at 40, 75 n.340.

In connection with Project Wall-E, LG also wanted to acquire a "Super Majority" (over 67%) stake in Alphonso so that it could override certain corporate actions, including with respect to the liquidity rights, and obtain flexibility to pursue a joint venture. *Id.* at 35. LG thus plotted to "buy [the Key Holders] out at the lowest possible price" following their terminations. *Id.* at 38 (citing B086).

E. Defendants Execute Project Wall-E

Defendants launched their carefully choreographed "nuclear option" on December 16, 2022, which they crassly dubbed "D-Day." Op. 43.

1. The LG-Affiliated Directors Fire the Officer Key Holders

In a hastily noticed Board meeting, the LG-Affiliated Directors proposed a resolution to terminate the five officer Key Holders—Kodige, Chordia, Kalampoukas, Beotra, and Baldua. Op. 42-43. The resolution attached twelve "Summary Example Reasons for Company Reorganization and Terminations," A3843-46, which were "backfilled" and "largely pretextual," Op. 37-38, 88-89. Critically, "[n]one … applied to Andrades or Sarma." *Id.* at 89.

The resolution also appointed Sexton as Alphonso's COO and Interim CEO. *Id*. at 43.

All four LG-Affiliated Directors approved the resolution, with one signing the day *before* it was even introduced. *Id.* at 43 & n.218.

2. Alphonso Fires the Two Remaining Key Holders and LG Purports to Remove the Common Directors

After the officer Key Holders were fired, only two remained: Andrades and Sarma. As planned, Sexton—the just-appointed "warm body"—quickly fired them, notwithstanding that they were "highly cooperative" and "clearly valued" employees, Op. 44, 76. In fact, Sexton "hardly knew who [they] were," *id*. at 86, and had "no basis for firing them other than blindly following the LG-Affiliated Directors' instructions," *id.* at 76. Neither LG nor Sexton had ever "interacted with them in any meaningful way," considered any alternatives to termination, or "g[iven] any consideration to [their] rights." *Id*. at 85.

With all Key Holders terminated, Zenith, at LGE's direction, quickly executed the Consent, purporting to remove the Common Directors from the Board because the Designation Condition was no longer satisfied. *Id.* at 45, 100.

3. Defendants Try to Buy Out the Key Holders on the Cheap

On D-Day, Wasinger told the Common Directors that LG would make "fair" buyout offers. Op. 43. But LG only offered the Key Holders $16.64 per share, *id.* (citing B167 § 2.1), notwithstanding that just a few weeks earlier LG internally

valued Alphonso between $700 million and $1.4 billion (or approximately $50 to $100 per share), *id.* at 38. Defendants moreover conditioned severance on accepting LG's low-ball offers. B144.

F. The Trial Court Invalidates the Common Directors' Removal

On March 30, 2023, Plaintiffs filed a complaint in the Court of Chancery asserting claims that: (i) the Consent was invalid pursuant to 8 *Del. C.* § 225, and (ii) Defendants breached their fiduciary duties. A0032-81. Plaintiffs' fiduciary duty claim was stayed pending resolution of the Section 225 claim. A0221-22 (Pre-Trial Order ¶ 2). On April 21, 2023, the Trial Court entered a Status Quo Order prohibiting Defendants from terminating or amending the Stockholders' Agreement during the pendency of the Section 225 action. Op. 45 n.227; B001-04.

Trial was held on September 20-21, 2023, during which nine witnesses testified. Op. 46, 52 n.246. The trial record included over 660 joint exhibits and 16 deposition transcripts.

On January 4, 2024, the Trial Court ruled that the Consent was invalid because it was procured by Alphonso's breach of its "reasonable efforts" obligation under Section 12.1 of the Stockholders' Agreement. The Trial Court assumed, without deciding, Defendants' argument that the Board was purportedly not bound by Section 12.1's "reasonable efforts" obligation and thus did not breach Section 12.1 by firing the officer Key Holders. *Id.* at 52-53, 61. But the Trial Court nevertheless

held that Alphonso breached Section 12.1 when Sexton later fired Andrades and Sarma for the "purpose of depriving them of their bargained-for and protected contract rights." *Id.* at 55. The Trial Court held that Sexton's actions were irreconcilable with Alphonso's obligation to ensure that Sarma's and Andrades's contractual rights, including the Director-Designation Right (which remained in place after the officer Key Holders were fired), were "effective" and that they "enjoy[ed] the benefits of" the agreement. *Id.*

Applying the prevention doctrine, the Trial Court held that Alphonso's breach was the "'but for' cause of the Designation Condition's non-occurrence" and excused the requirement that Andrades and Sarma remain Alphonso employees to retain their Director-Designation Right. *Id.* at 95-99. On that basis, the Court invalidated the Consent. *Id.* at 99-101.

The Trial Court "acknowledge[d]" Plaintiffs' alternative implied covenant and "twice tested" arguments. Op. 88-94. But the Trial Court, despite expressing doubt in dicta about aspects of those arguments (at least in part), did not ultimately reach them given the express breach. *Id.* at 88.

ARGUMENT

I. THE TRIAL COURT CORRECTLY HELD THAT ALPHONSO BREACHED SECTION 12.1 OF THE STOCKHOLDERS' AGREEMENT

A. Question Presented

Did the Trial Court correctly hold that, by "actively and affirmatively torpedo[ing]" the Director-Designation Right, Alphonso failed to use "reasonable efforts" to ensure that right remained "effective" and that Andrades and Sarma "enjoy[ed] the benefits" of the Stockholders' Agreement? Op. 46-88, 100-01. This issue was preserved. A0295-96; A0411-13.

B. Scope of Review

This Court reviews "questions of contract interpretation *de novo*," *Salamone v. Gorman*, 106 A.3d 354, 367 (Del. 2014), and "will not overturn the Court of Chancery's factual findings unless they are clearly erroneous," *Bäcker v. Palisades Growth Cap. II, L.P.*, 246 A.3d 81, 94 (Del. 2021).

C. Merits of Argument

The Trial Court correctly held that Alphonso breached Section 12.1. Defendants fail to demonstrate otherwise.

1. Alphonso Breached Section 12.1 by Firing the Two Non-Officer Key Holders for the Express Purpose of Eliminating the Director-Designation Right

As the Trial Court held, Alphonso breached Section 12.1 when it fired Andrades and Sarma for the "purpose of depriving them of their bargained-for and

protected contract rights," including the Director-Designation Right. Op. 55, 59-61, 81. As noted above, the Trial Court assumed, without deciding, that Section 12.1 imposed no obligations on Alphonso's Board and therefore did not analyze whether the LG-controlled Board breached Section 12.1 by terminating the officer Key Holders. *Id.* at 52-53, 61.[8] Regardless, the Trial Court's holding as to the two *non-officer* Key Holders is correct and alone warrants invalidating the Consent.

Section 12.1 obligates "[t]he Corporation"—i.e., Alphonso:

> to use its reasonable efforts … to ensure that the rights granted under this Agreement are effective and that the Parties enjoy the benefits of this Agreement. Such actions include, without limitation, the use of the Corporation's reasonable efforts to cause the nomination and election of the directors as provided in this Agreement.

A3602 (SHA § 12.1).

Defendants do not dispute that Andrades and Sarma are Key Holders. *E.g.*, Br. 1 n.1. As such, "the Stockholders' Agreement granted [them] express personal

[8] Section 12.1, however, obligates "the Corporation," which encompasses the Board. That the Stockholders' Agreement sometimes refers to the Board and the Corporation separately, Op. 52, is irrelevant. To the extent the Board was acting on Alphonso's behalf—which necessarily must be the case when firing Alphonso employees—such conduct must be attributed to Alphonso for purposes of Section 12.1. *See, e.g.*, *Stewart v. Wilmington Tr. SP Servs., Inc.*, 112 A.3d 271, 302-03 (Del. Ch. 2015) ("[A]ctions of the corporation's officers and directors, acting within the scope of their authority, are imputed to the corporation itself."). Concluding otherwise would let corporations evade their contractual obligations simply by delegating breaching conduct to their directors any time the board is referenced separately in the contract.

rights to designate directors so long as the Key Holders retained a certain percentage of Alphonso's outstanding Capital Stock," Op. 57; A3597 (SHA § 10.2(b)), which undisputedly remains the case.

Section 12.1's "reasonable efforts" language obligated Alphonso to "take all reasonable steps" to uphold the Director-Designation Right. *Williams Cos., Inc. v. Energy Transfer Equity, L.P.*, *Inc.*, 159 A.3d 264, 272 (Del. 2017); *see also* Op. 62-63. And Alphonso could not "pursue[] another path designed to *avoid*" that result. *Hexion Specialty Chems., Inc. v. Huntsman Corp.*, 965 A.2d 715, 749 (Del. Ch. 2008).

Applying this standard, the Trial Court held that "Alphonso 'actively and affirmatively torpedoed' the Director-Designation Right, in unequivocal breach of its obligations under Section 12.1." Op. 81 (quoting *Williams Cos.*, 159 A.3d at 272). As the Trial Court explained:

> Alphonso not only failed to take 'all reasonable steps,' the overwhelming weight of the evidence … compels the conclusion that Alphonso took *no* steps and made *no* efforts to maintain Andrades and Sarma's bargained-for right. Worse than taking no steps to ensure the right, Alphonso triggered the Designation Condition and deprived them of the right entirely.

Id. at 77.

Alphonso, acting through Sexton, its interim CEO, *id.* at 54 n.253, fired Andrades and Sarma to "deprive them of their Director-Designation Rights." Sexton had "no basis" for doing so "other than blindly following the LG-Affiliated

Directors' instructions." *Id.* at 75-76. Indeed, his "primary job duty" was to "[r]emove [the] two key holders." *Id.* at 40. Defendants do not dispute these findings. Nor could they, given the LG-Affiliated Directors' testimony admitting the same. *Id.* at 41 n.205.

The Trial Court bolstered its conclusion by analyzing whether Alphonso "(i) had reasonable grounds to take the action it did and (ii) sought to address problems with its counterparty." *Id.* at 67 (quoting *Menn v. ConMed Corp.*, 2022 WL 2387802, at *35 (Del. Ch. June 30, 2022)). Neither was the case. Consistent with the evidence described above, Alphonso had no "reasonable grounds" to fire Andrades and Sarma. *Id*. at 78-83; *supra* 14. And it "undeniably failed to take any steps or make any attempts to resolve the issues with Andrades and/or Sarma." Op. 87. There was "not a shred of evidence" that Alphonso or Sexton explored any "less drastic alternatives" to resolve any "perceived problems" with the other Key Holders. *Id*. at 83-85.

In sum, by terminating Andrades and Sarma, Alphonso improperly "picked winners and losers under the Stockholders' Agreement," "destroy[ing] the rights Andrades and Sarma bargained for and g[iving] LG[] rights it had not." *Id.* at 80-81. The Trial Court was undoubtedly correct in finding that such conduct breached Section 12.1.

2. Defendants' Arguments Do Not Warrant Reversal

Defendants argue that the Trial Court's interpretation of Alphonso's obligations under Section 12.1 is contrary to the text and the parties' negotiating history. Defendants are wrong.

(a) The Trial Court's Interpretation Is Consistent with Section 12.1's Plain Language

Defendants first argue that the Trial Court's interpretation of Section 12.1 "is at odds with its plain text," which purportedly "only requires Alphonso to take actions after the Parties exercise their rights." Br. 23-24, Point I.C.1. That interpretation is meritless.

(i) The Trial Court Did Not Improperly Read into Section 12.1 an Obligation to Satisfy Conditions

In support of their textual argument, Defendants argue that the Trial Court's purported "insistence that the Efforts Provision obligates Alphonso to satisfy *conditions* to rights under the Agreement writes language into the Agreement that does not exist." Br. 25; *id.* at Point I.C.1.a. But the Trial Court did not hold that Alphonso has some abstract obligation to "satisfy" the Designation Condition in all circumstances. Rather, the Trial Court correctly held that Alphonso could not "affirmatively torpedo" the Director-Designation Right by firing Andrades and Sarma for the express purpose of eliminating that right— i.e., Alphonso could not alter the status quo by eliminating the Designation Condition when it was otherwise satisfied. Op. 80-81. Defendants' contrary interpretation would render the

"reasonable efforts" obligation meaningless because Alphonso, under LG's direction and control, could eliminate the right—and terminate the Stockholders' Agreement altogether—simply by eliminating the condition precedent. *Infra* 28-29. Such an illogical construction should be rejected.

As explained by this Court, reasonable efforts "impose obligations to take *all reasonable steps* to solve problems and consummate the" obligation. *Williams Cos.*, 159 A.3d at 272 (emphasis added). Working to *undermine* a right by eliminating its condition precedent is the *antithesis* of taking "all reasonable steps" to uphold it. For example, in *Hexion*, a purchaser who was obligated to use "reasonable best efforts" to obtain transaction financing breached that obligation by soliciting a third-party opinion that the post-merger entity would be insolvent, "all but killing any possibility" of obtaining financing. 965 A.2d at 749, 751. A similar result followed in *WaveDivision Holdings, LLC v. Millennium Digital Media Systems, L.L.C.*, where the defendant agreed to use "commercially reasonable efforts" to obtain consents for an asset sale but instead worked to identify an alternative to the sale. 2010 WL 3706624, at *7 (Del. Ch. Sept. 17, 2010). The "clearest evidence" that the defendant breached its efforts obligation "was that it spent most of its energy and resources ... [on] efforts designed to thwart, not obtain, consent." *Id.* at *18.

As in these cases, Alphonso's efforts were designed to extinguish, not uphold, the Director-Designation Right.

Defendants focus on the absence of the word "conditions" in Section 12.1, Br. 25-26, but that is simply consistent with the section's broad scope. The parties did not enumerate *every* obligation required to ensure that the various "rights" under the Stockholders' Agreement remained effective and the numerous "benefits" were enjoyed. For the same reasons, Defendants' cases, Br. 26, are irrelevant. That some contracts "expressly link[] the efforts provision to a condition of performance," *id.*, is of no moment. Defendants' cases offer no basis to conclude that, in obligating Alphonso broadly to use its reasonable efforts to ensure that the rights and benefits under the agreement were protected, the parties intended to give Alphonso *carte blanche* to "torpedo" those same rights and benefits by acting intentionally and in bad faith to eliminate the conditions thereto.

Finally, contrary to Defendants' suggestion, *id.* at 24-25, the Trial Court did not hold that Alphonso could *never* terminate Andrades and Sarma. Rather, Section 12.1 only "temper[s] the CEO's use of his termination 'right'"—precluding Alphonso from terminating Andrades and Sarma for the very purpose of eliminating their (and the other Key Holders') contractual rights. Op. 73. That "frankly small obligation … can hardly be said to have rendered the right to terminate employees 'illusory.'" *Id*. at 72.

(ii) Defendants' Alternative Interpretation Contravenes Section 12.1's Plain Text

Defendants next argue that Section 12.1's "most straightforward" reading "is that Alphonso must use reasonable efforts to take certain actions *after* the Parties *exercise* their contractual rights." Br. 28 (emphasis added). But Defendants' position contravenes the provision's plain text and would lead to absurd results.

First, Defendants' interpretation rewrites Section 12.1, violating the basic principle that "[c]lear and unambiguous language ... should be given its ordinary and usual meaning." *Lorillard Tobacco Co. v. Am. Legacy Found.*, 903 A.2d 728, 739 (Del. 2006) (citation omitted). Section 12.1 does not suggest that Alphonso's obligations arise only *after* a party acts or refer to "exercising" rights, as Defendants contend; it obligates Alphonso to "ensure that the rights *granted* under this Agreement are effective." A3602 (SHA § 12.1 (emphasis added)). Defendants cannot change the provision's meaning by swapping the word used ("granted") for a different word ("exercised"). Defendants' interpretation also makes no sense in the context of rights that are "granted" but not necessarily "exercised," such as the right to have LG make certain tender offers on a pre-determined schedule, *supra* 7, or to receive financial information without any action, *see, e.g.*, A3582 (SHA § 7.1(a)).

Second, Defendants argue that the Trial Court wrongly interpreted "effective" to mean "'operative; in effect' and 'productive,'" Op. 65-66, and that it should

instead be construed to mean "successful in producing a desired or intended result." Br. 28-30. But Defendants fail to explain why their definition would lead to a different outcome. As the Trial Court found, "Alphonso took *no* steps and made *no* efforts to maintain Andrades and Sarma's bargained-for right" and instead "actively and affirmatively torpedoed" it. Op. 77, 81. In doing so, Alphonso did not ensure that the right was "successful in producing a desired or intended result."[9]

Third, Defendants simply ignore the separate language in Section 12.1 obligating Alphonso to use reasonable efforts to ensure that the parties "*enjoy the benefits* of this Agreement." A3602 (SHA § 12.1 (emphasis added)). The Director-Designation Right is a benefit under the Stockholders' Agreement. "[T]orpedo[ing]" it is the *opposite* of "ensur[ing]" that the Key Holders, including Sarma and Andrades, "enjoy[ed]" that "benefit." Op. 80-81.

Fourth, Defendants hypocritically complain that the Trial Court's (correct) "interpretation elevates one Party's rights over another's," Br. 27, when it is *Defendants*' interpretation that seeks to do so. Defendants argue that, by "requir[ing] Alphonso to safeguard the Designation Condition to the Director-Designation Right,

[9] Defendants observe that "the Director-Designation Right is 'successful in producing its desired or intended result' if, after the Employee Key Holder Majority exercises its Director-Designation Right to nominate the Common Directors, the chosen Common Directors are elected to Alphonso's Board." Br. 29. But the fact their interpretation makes sense in one specific context does not mean it was the only reasonable, much less the intended, construction.

the Trial Court requires Alphonso to take actions that negate Zenith/LGE's competing right" to "elect directors to the vacant Common Director seats if the Designation Condition is not met." *Id*. But those rights are not "competing." As Defendants acknowledge, any right to fill any vacant Common Director seats arises only "*if* the Designation Condition is not met." *Id.* (emphasis added). Thus, that right is contingent and residual. Zenith/LGE had no such right at the time Alphonso fired Andrades and Sarma because at that point, the Designation Condition remained satisfied (and, but for Alphonso's breach, would have remained satisfied).

Indeed, Defendants' interpretation elevates *LG's* rights over the Key Holders' by allowing LG-controlled Alphonso to eviscerate the Director-Designation Right to give LG designation rights it otherwise would lack. Delaware courts do not interpret contracts to produce such "commercially unreasonable or ... absurd results." *Manti Holdings, LLC v. Authentix Acquisition Co., Inc.*, 261 A.3d 1199, 1211 (Del. 2021); *see also* WILLISTON ON CONTRACTS § 32.11 (4th ed. 2017) ("[I]nterpretations which render the contract fair and reasonable are preferred to those which render the contract harsh or unreasonable to one party.").

Finally, Defendants' suggestion that Alphonso's reasonable efforts obligations are limited to "caus[ing] the nomination and election of the directors," Br. 29-30, ignores Section 12.1's plain language, which extends broadly to *all* "rights" under and "benefits" of the Stockholders' Agreement. Defendants rely on

Section 12.1's second sentence, Br. 29, but "by its own terms, [that sentence] does not limit Alphonso's obligations under the first sentence to solely the 'nomination and election' of Common Directors," Op. 60. Defendants observe that Section 12.1 is "substantially similar" to certain "model agreements," Br. 29-30 (citing 6A AM. JUR. LEGAL FORMS 2D § 74:1202 § 4.A), but fail to explain the relevance. And their claim that "one legal scholar has observed that similar efforts provisions ... are limited to requiring the corporation to include designated directors 'in [the] corporate proxy slate' and exerting '[c]orporate efforts to elect' those designees." *Id.* at 30 (citing Ex. D at tbl. 1), is unsupported by the cited article, which says no such thing.[10]

(b) The Trial Court's Interpretation Is Consistent with the Parties' Bargain

Lacking support in Section 12.1's plain language, Defendants retreat to extrinsic evidence about the parties' purported "bargain." Br. Point I.C.2. But the Stockholders' Agreement includes an integration clause, A3607 (SHA § 13.6), and no party has argued that Section 12.1 is ambiguous, *e.g.*, Op. 64. Accordingly, "extrinsic evidence may not be used." *Exelon Generation Acquisitions, LLC v.*

[10] At most, the article notes that most stockholders' agreements include corporate commitments "to make its best or reasonable efforts to ensure [a] designees' election." Ex. D at 1151, tbl. 1. That says nothing about the meaning of broader "reasonable efforts" provisions that apply, as here, to *all* "rights" and "benefits"—not just voting rights.

Deere & Co., 176 A.3d 1262, 1267 (Del. 2017).[11] Even if considered, however, the extrinsic evidence supports *Plaintiffs*' interpretation.

(i) Defendants' Interpretation Would Render the Entire Stockholders' Agreement Illusory

Defendants argue that the Trial Court "substitute[d] [its] preferred result for the bargain that the Parties struck," Br. 30, but Defendants again have it backwards: *Their* interpretation violates the parties' bargain.

According to Defendants, the Key Holders gave up control in exchange for "valuable" liquidity rights and the right to appoint three Common Directors to, among other things, protect those liquidity rights. Br. 14, 20; *supra* 6-7. Defendants concede, however, that the liquidity rights were *not* "conditioned … on [the Key Holders'] continued employment." Br. 13. That concession is fatal.

Under Defendants' interpretation, the day after the Stockholders' Agreement was signed, LG could have fired the Key Holders and terminated the agreement, effectively nullifying the valuable consideration, including the liquidity rights, that the Key Holders (and other minority stockholders) received in exchange for relinquishing control. Defendants recognize as much. Br. 20 n.8. Their

[11] Defendants argue that the Court may "consult undisputed background facts to place the contractual provision in its historical setting." Br. 32 n.11 (citation omitted). But the "facts" that Defendants identify are neither "undisputed" nor "background," and, instead, are offered to *alter* Section 12.1's plain meaning.

interpretation is thus inconsistent with their *own* understanding of the bargain—that the liquidity rights were *not* conditioned on the Key Holders' continued employment.

The Trial Court reached a similar conclusion, reasoning that Defendants' interpretation "read[s] the Director-Designation Right as, in essence, an illusory right" or "at least, a right that LG[] and Alphonso could terminate at their election" and, moreover, would "render the entire Stockholders' Agreement terminable at LG[]'s option." *Id.* at 73 & n.329. But Delaware courts "will not read a contract to render a provision or term 'meaningless or illusory.'" *Osborn ex rel. Osborn v. Kemp*, 991 A.2d 1153, 1159 (Del. 2010) (quoting *Sonitrol Holding Co. v. Marceau Investissements*, 607 A.2d 1177, 1183 (Del. 1992)). They certainly will not interpret a contract to render the *entire agreement* illusory. And as the Trial Court found, that is certainly "not what the parties bargained for." Op. 73.[12]

(ii) Plaintiffs' Pre-Existing "At-Will" Employment Arrangement Is Irrelevant

Defendants next argue that the Trial Court's interpretation of Section 12.1 purportedly "overrides … the Parties' clearly expressed intent for at-will

[12] That the Stockholders' Agreement and liquidity rights are "still in effect," Br. 20 n.8, is irrelevant. What matters is that, under Defendants' interpretation, LG *could* terminate the agreement, rendering the entire bargain illusory. That Defendants' plans to do so, Op. 88, were stymied by this litigation—first by the Status Quo Order and then the Trial Court's ruling—proves nothing.

employment and termination" because Andrades and Sarma were "at-will" employees before entering into the Stockholders' Agreement. Br. 31-34.

Again, that argument is inconsistent with the parties' overarching bargain. It is likewise inconsistent with the negotiating history. As the Trial Court explained, "subsequent to the establishment of the at-will employment relationship, the parties entered into the Stockholders' Agreement" and "Andrades and Sarma bargained for certain rights under that agreement," including the Director-Designation Right, the liquidity rights, and Alphonso's "reasonable efforts" to uphold those rights. Op. 83. Nothing in the Stockholders' Agreement indicates a "clearly expressed intent" that they could be terminated "for any reason and at any time," Br. 33-34.

None of Defendants' other evidence related to the parties' negotiations conflicts with the Trial Court's interpretation of Section 12.1. Defendants claim, based on a June 2020 term sheet, that the "Key Holders proposed three-year employment contracts to change their at-will status," which LG rejected. Br. 33 (citing A2104-05). But when the term sheet was circulated, none of the relevant Stockholders' Agreement provisions—including the concept of Key Holders, the Director-Designation Right, the Designation Condition, and Section 12.1—were

even contemplated.[13] Indeed, the first draft of the Stockholders' Agreement was not circulated until October 19, 2020, *see* A2140, many months after the June 2020 term sheet. Accordingly, putting aside that the term sheet, on its face, did not in fact propose to modify anyone's at-will employment status, it implies nothing about the meaning or intent of the relevant Stockholders' Agreement provisions.

Defendants also cite testimony from LG's lead negotiator, Thomas Hahm. Br. 32-33 (quoting A1023 (Hahm Dep. Tr. at 51:1-3)). But Defendants elide, among other things, that his testimony was about firing *C-level officers*—not Andrades and Sarma. A1021-24 (Hahm Dep. Tr. at 49:19-52:5). Indeed, Hahm expressly *denied* discussing "the possibility of LG firing any Alphonso employees other than C-level officers." A1023-24 (Hahm Dep. Tr. at 51:19-52:5).

(iii) The Trial Court's Interpretation Is Not "Commercially Unreasonable"

Finally, Defendants claim the Trial Court's interpretation is "commercially unreasonable" and "absurd" because it results in "Andrades and Sarma [having] special employment protections that the other Key Holders did not hold." Br. 34-36. As an initial matter, that is not "commercially unreasonable" or "absurd" because protections against LG's unfettered control benefit *all* minority stockholders

[13] These concepts were introduced in or after October 2020. *Compare* A2103-09 (June 2020 term sheet), *with* A2146, A2173, A2176 (first draft of Stockholders' Agreement, dated October 18, 2020).

(including the Key Holders who negotiated the deal) and ensure continued minority Board representation. *Supra* 6-7. Indeed, this very case illustrates the benefit to the other Key Holders.

Regardless, even if Defendants were correct, that is merely a consequence of the Trial Court assuming (without deciding) *Defendants' own position* below that Section 12.1 did not restrict the Board's ability to terminate the officer Key Holders. Op. 52-53, 61. It was only on that basis that the Trial Court remarked that "Andrades and Sarma struck a heartier deal than the other (executive) Key Holders." *Id.* at 61. Had the Trial Court decided that Section 12.1 also applies to Alphonso's Board—which it does, *supra* 18 & n.8—that observation would be moot.

* * *

Section 12.1's plain text and the parties' bargain are clear: At a minimum, Alphonso could not fire Andrades and Sarma for the express purpose of eliminating the Director-Designation Right. Accordingly, the Trial Court's holding that Alphonso breached Section 12.1 should be upheld.

II. THE TRIAL COURT'S REMEDY WAS PROPER

A. Question Presented

Did the Trial Court err by invalidating the Consent after determining that it was procured by a breach of the Stockholders' Agreement for the purpose of circumventing minority stockholder rights? This issue was preserved. A0309-12; A0428-33.

B. Scope of Review

"Whether … an equitable remedy [under Section 225] exists or is applied using the correct standards is an issue of law and reviewed *de novo*, but … application of those facts to the correct legal standards … are reviewed for an abuse of discretion." *Bäcker*, 246 A.3d at 95.

C. Merits of Argument

The Trial Court relied on the prevention doctrine to reinstate Andrades's and Sarma's Director-Designation Right and invalidate the Consent. Op. 95-102. That remedy should be affirmed, as both a correct application of the prevention doctrine and a proper exercise of the Court's power under Section 225.

"The prevention doctrine provides that a party may not escape contractual liability by reliance upon the failure of a condition precedent where the party wrongfully prevented performance of that condition precedent." *BitGo Holdings, Inc. v. Galaxy Digit. Holdings, Ltd.*, 319 A.3d 310, 333 (Del. 2024) (cleaned up); *see also* Restatement (Second) of Contracts § 245 (1981) ("Where a party's breach

by non-performance contributes materially to the non-occurrence of a condition of one of his duties, the non-occurrence is excused.").

As the Trial Court correctly held, the doctrine applies here because Alphonso's "non-performance made the satisfaction of the [Designation Condition] 'less likely'"—indeed, impossible—when Alphonso fired the two remaining Employee Key Holders to eliminate the condition. Op. 98. The Trial Court therefore ordered that Andrades and Sarma (i) "step[ped] back into the shoes of Employee Key Holders," as if Alphonso had performed its obligations under Section 12.1, and (ii) retained a "continuing right" to designate Common Directors; accordingly, LG had no right to remove them. *Id.* at 98-99, 101.

Defendants' challenges to this remedy, Br. Point II.C, lack merit.

1. The Trial Court Did Not Improperly Apply Its Remedy "As To" Zenith

Defendants first argue that the prevention doctrine supplies a remedy only "as to" a breaching party—here, Alphonso—and therefore cannot have excused a condition "as to" Zenith. Br. 38-39. Not so. Even putting aside Zenith/LGE's control over Alphonso, none of Defendants' authority provides that the doctrine applies only to a "breaching" party. *Id.* at 38-40.

Defendants' argument fails for several additional reasons. First, the Trial Court did not excuse the Designation Condition "as to" Zenith (or LGE). Rather, it held that, because "the Designation Condition was excused and Andrades and Sarma

stepped into the shoes of acting Employee Key Holders, *it follows* that the requirements of Section 10.3(a)(ii) were not satisfied and the Consent must be deemed invalid." Op. 101 (emphasis added). That is, the Consent's invalidation was simply a logical *consequence* of the prevention doctrine's application, not a specific application of the doctrine "as to" Zenith.

Second, even if the doctrine was applied "as to" Zenith, that would still be appropriate. As noted, the prevention doctrine ensures "that a party may not escape contractual liability by reliance upon the failure of a condition precedent where the party wrongfully prevented performance of that condition precedent." *BitGo Holdings*, 319 A.3d at 333. That applies aptly here. Alphonso's breach of Section 12.1 was directed by LGE, acting through Zenith, for their benefit. Op. 76-77, 81-82. Zenith/LGE "may not escape" the consequences of Alphonso's breach "by reliance upon the failure of [the Designation Condition] where [LG] wrongfully prevented performance of that condition precedent." *BitGo Holdings*, 319 A.3d at 333; *see also* 13 WILLISTON ON CONTRACTS § 39:6 (4th ed. 2017) (prevention doctrine ensures that "a party should not be able to take advantage of its own wrongful act").

2. The Assumption of Risk Exception Does Not Apply

Defendants next argue that the "assumption of risk" exception to the prevention doctrine applies because Andrades and Sarma were at-will employees

and supposedly assumed the risk of the Designation Condition's non-occurrence. Br. 40-42. That too is wrong.

The Trial Court *sua sponte* analyzed whether the exception applied, holding it did not. Op. 99-100. The Trial Court reasoned that Andrades and Sarma did not assume the risk that LG would cause the Designation Condition's failure by firing them to eliminate the Director-Designation Right, given that Section 12.1 obligated Alphonso to use "reasonable efforts" to ensure the right would remain "effective." *Id.* And the Trial Court correctly held that, although Section 10.5(c) grants Alphonso's CEO certain rights to terminate non-officer executive employees, any such right "is tempered by the requirement to use reasonable efforts to ensure the rights granted therein." *Id.* at 72, 99-100.

Defendants respond that the Trial Court "reads a limitation" into Section 10.5(c) "that does not exist" because that provision contains only two express limitations on the CEO's termination power, neither of which "curtailed the CEO's ability to terminate Andrades or Sarma." Br. 42-43. But that ignores the "basic tenet of contract law that [a court] must give meaning to contracts by interpreting them as a whole." Op. 71. Put differently, Section 12.1 can limit Section 10.5(c)'s application even if Section 10.5(c) does not itself contain that limitation.

Moreover, Defendants mischaracterize Section 10.5(c), which only authorizes Alphonso's CEO to terminate "non-executive officer employees of the Corporation

in accordance with such human resources and labor policy following its adoption and approval by the Board of Directors." A3600 (SHA § 10.5(c)). There is no evidence that Sexton fired Andrades and Sarma "in accordance with" any such policy. Rather, Sexton fired them at LG's bidding and for LG's benefit, specifically to deprive them and the other Key Holders of their contractual rights. *Supra* 19-20.

Defendants also argue that, even if Section 12.1 limits the CEO's termination power, "the Board retained the power to fire Andrades and Sarma." Br. 43. Putting aside that Section 12.1 *also* applies to the Board (notwithstanding the Trial Court's assumption otherwise), *supra* 18 & n.8, Defendants did not have that understanding during Project Wall-E. Rather, Defendants believed they "[n]eed[ed] … 'new CEO's cooperation to fire non-executive key holders,'" and "appointed Sexton as a warm body do the dirty work that [the Board] could not." Op. 39 (citing B074; B139), 56, 76.

Finally, Defendants' out-of-state cases, Br. 44-45, are irrelevant. None involved a situation, as here, where Plaintiffs were intentionally fired for the express purpose of eliminating their contractual rights. Rather, each involved the contractually foreseeable consequences of corporate action taken in good faith for reasons that had nothing to do with the employees' contractual rights. Nor, in any event, did the cases involve reasonable efforts provisions, like Section 12.1, which

provided an "express limit on the exercise of the [company's] discretion" to terminate the employees. Op. 100.

3. The Trial Court's Remedy Was Within Its Equitable Authority

Setting aside the prevention doctrine's application, the Trial Court could have reached the same result invoking its equitable authority under Section 225. The statute authorizes courts to "make such order or decree ... as may be just and proper," 8 *Del. C.* § 225(a), and gives "wide discretion to craft a remedy," *Portnoy v. Cryo-Cell Int'l, Inc.*, 940 A.2d 43, 82 n.208 (Del. Ch. 2008); *see also Flaa v. Montano*, 2014 WL 2212019, at *11 n.59 (Del. Ch. May 29, 2014) (same).

Accordingly, Delaware courts routinely tailor Section 225(a) remedies to prevent defendants from benefitting from their wrongdoing. *See, e.g.*, *Portnoy*, 940 A.2d at 83 (ordering "special meeting" to hold new board election presided over by special master where election process was tainted by inequitable behavior); *Agranoff v. Miller*, 1999 WL 219650, at *18 (Del. Ch. Apr. 12, 1999) (restoring previous board and "order[ing] that [company] need not recognize votes cast by [defendant] until … he rectifies his improper conduct"), *aff'd*, 737 A.2d 530 (Del. 1999).

The Trial Court was well within its equitable powers under Section 225 to craft a remedy for Alphonso's breach, which was done "at the LGE-controlled Board's bidding for the benefit of … Zenith/LGE." Op. 76-77; *see also Agostino v.*

Hicks, 845 A.2d 1110, 1125 (Del. Ch. 2004) ("[E]quity will not suffer a wrong without a remedy.").

III. THIS COURT CAN AFFIRM ON ALTERNATIVE GROUNDS

A. Question Presented

Can the Trial Court be affirmed on the alternative grounds that the Consent was invalid because it was (i) procured by LG breaching an implied term in the Stockholders' Agreement that precluded LG from causing the failure of the Designation Condition in bad faith to eliminate the Key Holders' contractual rights, and then relying on the failure of the condition to effect that intended result; or (ii) the byproduct of an inequitable, bad-faith scheme that fails "twice-tested" review? This issue was preserved. A0296-309; A0413-28.

B. Scope of Review

This Court may affirm the Trial Court's judgment "with any argument that is supported by the record." *Hercules Inc. v. AIU Ins. Co.*, 783 A.2d 1275, 1277 (Del. 2000). Questions of law are reviewed de novo. *B.F. Rich & Co., Inc. v. Gray*, 933 A.2d 1231, 1241 (Del. 2007). Factual findings are reviewed for clear error. *Bäcker*, 246 A.3d at 96.

C. Merits of Argument

Even if this Court agrees with either of Defendants' arguments for reversal, it can still affirm because the Consent is invalid for two independent reasons: (i) it was procured by an implied breach of the Stockholders' Agreement, A0296-306, and (ii) it fails Delaware's "twice-tested" review, A0307-09. While the Trial Court

expressed doubts about aspects of each argument, it did not reach them given the express breach of Section 12.1. Op. 88.

1. The Consent Is Invalid Because It Was Procured by a Breach of the Implied Covenant

The implied covenant is "inherent in all contracts" and addresses "contractual gaps … neither party anticipated." *Dieckman v. Regency GP LP*, 155 A.3d 358, 367 (Del. 2017) (cleaned up). Contractual terms are implied "when necessary to protect the reasonable expectations of the parties." *Baldwin v. New Wood Res. LLC*, 283 A.3d 1099, 1116 (Del. 2022). A party breaches the covenant by "frustrat[ing] the 'overarching purpose' of the contract by taking advantage of [its] position to control implementation of the agreement's terms." *Dunlap v. State Farm Fire & Cas. Co.*, 878 A.2d 434, 442 (Del. 2005) (citation omitted). The covenant is "particularly important in contracts that endow one party with discretion in performance" and "requires that the 'discretion-exercising party' make that decision in good faith." *Amirsaleh v. Bd. of Trade of City of N.Y., Inc.*, 2008 WL 4182998, at *8 (Del. Ch. Sept. 11, 2008); *see also Airborne Health, Inc. v. Squid Soap, LP*, 984 A.2d 126, 146-47 (Del. Ch. 2009) (similar).

Here, LG breached an implied term precluding it from relying on the failure of the Designation Condition (or similar conditions) to eliminate the Key Holders' contractual rights when LG caused the failure of the condition, by firing Sarma and Andrades (along with the other Key Holders) for the purpose of eliminating those

rights. The Stockholders' Agreement does not address whether LG has such a right, creating a gap; without an implied term, the "overarching purpose" of the contract would be "frustrate[d]." *Dunlap*, 878 A.2d at 442.

Again, the parties' central bargain was that LG got control, and, in exchange, the Key Holders got cash, along with liquidity and governance rights to protect the future value of their remaining equity. Op. 12; *supra* 6-7. Allowing LG to direct the termination of all Key Holders—including Andrades and Sarma—without any good-faith justification and solely to eliminate the Designation Condition would nullify those bargained-for rights. *Supra* 28-29. Such an interpretation would render the Director-Designation Right and, indeed, the entire Stockholders' Agreement, including the liquidity rights, illusory. *Supra* 29. Because "that is not what the parties bargained for," *id.* at 73, an implied term is necessary to protect the bargain.

Such a result likewise would be inconsistent with the parties' "reasonable expectations." *Baldwin*, 283 A.3d at 1116. The Key Holders would never have entered into the Stockholders' Agreement had they understood that LG could unilaterally eliminate their rights by terminating all the Key Holders to invoke the Designation Condition (or the identical condition in the agreement's termination clause). *Supra* 6-7; *see also* A1787 (Chordia Tr. at 29:5-30:2); A1831 (Kodige Tr. 2071:1-208:5, 208:15-23); A0886 (Beotra Dep. Tr. at 353:25-354:16, 355:19-356:19). Nor did LG's lead negotiator have that understanding. As he testified, the

Designation Condition was intended to ensure the Key Holders had "skin in the game," meaning an incentive to "stay [at Alphonso] … and build value." A1051-52, 1066-67 (Hahm Dep. Tr. at 79:21-80:4, 94:25-95:13); *supra* 8. In other words, it was intended to *keep* the Key Holders at Alphonso, not give LG a *loophole* to eliminate their contractual rights.

Defendants argued below that there is no implied breach because Section 10.5(c) grants the Board the right to "terminate employment … of executive officers of the Corporation." A3600 (SHA § 10.5(c)). That argument fails because Section 10.5(c) is discretionary and cannot be exercised in bad faith. *See, e.g.*, *SerVaas v. Ford Smart Mobility LLC*, 2021 WL 3779559, at *10 (Del. Ch. Aug. 25, 2021) ("[P]arties never accept the risk that their counterparties will exercise their contractual discretion in bad faith[.]"). More importantly, it is simply irrelevant to the *non-officer* Key Holders, Andrades and Sarma, as to whom the Board clearly lacked any contractual termination right.

The Trial Court found ample evidence of bad faith here. *Supra* 11-16; Op. 29-44. Acting "to deny the other side the fruits of the parties' bargain," as Defendants did here, is quintessential bad faith conduct that violates the implied covenant. *Chamison v. HealthTrust Inc.—Hosp. Co.*, 735 A.2d 912, 920 (Del. Ch. 1999), *aff'd*, 748 A.2d 407 (Del. 2000); *Amirsaleh*, 2008 WL 4182998, at *9. Indeed, if Section 10.5(c) provided a clear-cut basis for Defendants' conduct, why

did they painstakingly conceal their plans and, far worse, *lie* about them during this litigation—including, for example, generating pretextual reasons for the termination of the Key Holders, Op. 37-38, and denying that they ever intended to terminate the Stockholders' Agreement despite all evidence to the contrary, *id.* at 40-42 & n.207. The answer is simple: Defendants knew their conduct was undertaken in bad faith and impermissible under the parties' contract.[14]

2. The Consent Is Invalid Under Delaware's "Twice-Tested" Rule

The Consent should also be deemed invalid under Delaware's "twice-tested" rule. "This Court has long recognized that 'inequitable action does not become permissible simply because it is legally possible.'" *Bäcker*, 246 A.3d at 96 (quoting *Schnell v. Chris-Craft Indus., Inc.*, 285 A.2d 437, 439 (Del. 1971)). Thus, corporate acts are "twice-tested"—"first for legal authorization, and second for equity." *Id.* (cleaned up).

Because Section 225 "embod[ies] an appropriately tailored version of [this] foundational principle," *Brown v. Kellar*, 2018 WL 6721263, at *7 (Del. Ch. Dec.

[14] The Trial Court's dicta regarding the implied covenant claim, Op. 89-93, does not warrant a different conclusion. First, the Trial Court's observations as to the implied claim were limited only as to the *officer* Key Holders. *Id.* at 91. Second, although the Trial Court briefly discussed the parties' negotiating history, *id.* at 92, there are various issues with relying on that history, as explained, *supra* 30-31, particularly because, absent an implied term (or an express breach), the Key Holders' rights would be illusory, frustrating the parties' bargain.

21, 2018), courts have applied twice-tested principles in Section 225 actions, *see, e.g.*, *Bäcker*, 246 A.3d at 85-86 (affirming decision declaring board action "invalid as a matter of equity"); *Totta v. CCSB Fin. Corp.*, 2022 WL 1751741, at *1, *11-21 (Del. Ch. May 31, 2022) (invalidating board "conduct [that] was invalid under equitable principles"), *aff'd*, 302 A.3d 387 (Del. 2023); *Brown*, 2018 WL 6721263 at *6-7 (considering inequitable conduct in challenge to "plaintiff director's removal"); *Portnoy*, 940 A.2d at 79, 83 (ordering new election where defendant "was dishonest").[15]

Project Wall-E had every hallmark of bad-faith conduct that, even if technically permissible (which it was not) is inequitable. In the Trial Court's words:

- It "was undertaken for the purpose of eviscerating the Key Holders' liquidity rights and the limited protections they had negotiated of those

[15] Defendants argued below, A0381-86, that equitable review was not available, relying on dicta in *Coster v. UIP Cos., Inc.*, that "[a]lmost all of the post-*Schnell* decisions involved situations where boards of directors deliberately employed various legal strategies either to frustrate or completely disenfranchise a shareholder vote." 300 A.3d 656, 666-667 (Del. 2023). Putting aside that this aptly describes what happened here, *Coster* affirmed that *Schnell* is triggered by *any* corporate action that, through "an improper manipulation of the law, would deprive a person of a clear right." *Id.* at 666 (internal quotations omitted). Moreover, twice-tested review is regularly applied outside the stockholder franchise setting. *E.g.*, *In re Invs. Bancorp, Inc. S'holder Litig.*, 177 A.3d 1208, 1222-23 (Del. 2017) (exercise of authority under compensation plan); *Bamford v. Penfold, L.P.*, 2022 WL 2278867, at *34 (Del. Ch. June 24, 2022) (adoption of exculpatory provision). The Trial Court declined to "delve into this complex area" of law given Alphonso's express breach. Op. 94.

rights" and to enable "terminating the Stockholders' Agreement altogether." Op. 88.

- LG "attempted to backfill justifications" for its decision to terminate the Key Holders, many of which "were pretextual," and "[n]one" of which "applied to Andrades or Sarma." *Id.* at 89.

- LG "sought to capitalize on the Key Holders' terminations by acquiring a larger stake in Alphonso," *id.* at 38, and "taking control from the Key Holders," *id.* at 29, at a price well below LG's own valuation of Alphonso, *id.* at 38, 43.

As this Court has explained, "we are uncomfortable embracing the idea that cliques of the board may confer and sandbag a fellow director" or "develop Pearl Harbor-like plans to address their concerns about the company's policy directions or the behavior of management." *OptimisCorp v. Waite*, 137 A.3d 970, 2016 WL 2585871, at *2-*3 (Del. Apr. 25, 2016) (TABLE). Yet that is precisely what Defendants did when they clandestinely developed Project Wall-E and launched the "nuclear option" on "D-Day" to eliminate the Key Holders' rights and seize unfettered control over Alphonso.

As in *Hollinger International, Inc. v. Black*, the Consent "complete[d] a course of contractual and fiduciary improprieties" by a controller and was "adopted for an inequitable purpose and ha[d] an inequitable effect." 844 A.2d 1022, 1081 (Del. Ch. 2004), *aff'd*, 872 A.2d 559 (Del. 2005). It fails "twice-tested" review.

CONCLUSION

For the foregoing reasons, the Trial Court's judgment should be affirmed.

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