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IN THE SUPREME COURT OF THE STATE OF DELAWARE

MARTIN FLOREANI, CHRISTINA FLOREANI, AND CHARLENE FLOREANI,	)	
	)	No. 491, 2024
Plaintiffs Below, Appellants	)	Court Below:
	)	Court of Chancery of the State of Delaware
v.	)	
	)	C.A. No. 2023-0684-LM
FLOSPORTS, INC., a Delaware Corporation	)	
Defendants below, Appellee	)	

CORRECTED OPENING BRIEF OF APPELLANTS

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NATURE OF PROCEEDING

Martin Floreani and his sisters, Charlene and Christina Floreani (collectively, the "Floreanis"), have all owned shares directly and indirectly in defendant FloSports, Inc. ("FloSports" or the "Company") since Martin Floreani and his brother Mark Floreani, FloSports current chief executive officer, founded the Company. After years of receiving little or no information about the Company, the Floreanis and another shareholder availed themselves of their rights under Section 220 of the Delaware General Corporation Law in order to value and sell their shares. As Magistrate Mitchell found after a full-day trial, FloSports repeatedly raised a series of procedural arguments at each step to delay the inevitable production of the financial information about FloSports effectively depriving the Floreanis of their property interest in their shares. After entry of the Magistrate's Report, FloSports filed an extensive series of exceptions, including with respect to (1) the form and manner of the Section 220 request, the propriety of which FloSports had expressly stipulated to at trial; and (2) the timeframe within which Plaintiffs filed their amended complaint after the September 27th demand.

In its letter decision, entered October 31, 2024, the Court of Chancery disregarded the evidence adduced at the trial before Magistrate Mitchell, granted two of FloSports' exceptions, and denied the Floreanis all relief. In fact, the Court inexplicably analyzed the two prior demands even though FloSports expressly

conceded at trial to the propriety of the form and manner of the third demand rendering the prior demands irrelevant. Ultimately, the Chancery Court concluded that the Floreanis' amended complaint that followed the "accepted" September 27thdemand by nine business days (thirteen calendar days) violated the five business day rule under Section 220(c). The Chancery Court incorrectly equated the motion to amend the complaint with the filing of the actual complaint. The present appeal challenges that determination.

SUMMARY OF ARGUMENT

1. The Court of Chancery legally erred in holding that the Floreanis' motion seeking authority to amend the complaint filed on September 27, 2023, the same date upon which the third demand for inspection was made, rather than the actual filing of the amended complaint on October 10, 2023, did not comply with the five business day rule under Section 220(c) of the Delaware General Corporation Law. On October 4, 2023, FloSports responded to the September 27thdemand (referred to by the Chancery Court as the "third demand") by refusing to produce the documents requested. The Floreanis awaited that response and then filed the amended complaint on October 10th. The Court of Chancery ignored Court of Chancery Rule 15(a)(3) which clearly distinguishes between a motion to amend and the filing of the amended pleading once approved. Rather, the Chancery Court relied upon two cases, *Katz v. Visionsense Corp.*, 2018 WL 58303214 *8 (Del. Ch. Aug 16, 2018) and *MaD Investor GRMD, LLC v. GR Cos., Inc.*, 2020 WL 6306028 at *2-5 (Del. Ch. Oct. 28, 2020)both of which only state, in entirely different contexts, that the five business day rule is strictly construed. Had FloSports timely complied with the September 27th demand in its October 4th response, then the Floreanis would have had no need to proceed with the amended complaint on October 10th. Not surprisingly, after eleven months of delays and obfuscation, FloSports did not.

2. The Court of Chancery erred as both a matter of fact and law with respect to its separate conclusion regarding the relevance and sufficiency of the first and second notices with respect to form and manner where FloSports stipulated to the sufficiency of the Third Notice. At trial, counsel for FloSports expressly stipulated to the propriety and adequacy of the third demand stating,

> We have no problem with the third demand. We have no issue with the signature on the third demand. Just to save time, we'll stipulate that that demand complies with the form and manner requirements and we can move on.

Tr. (Dkt. 58) 21:5-10 (A757). There was no issue before the Court regarding the form and manner of the third demand and therefore, no basis to refer to the adequacy of the first two demands.

STATEMENT OF FACTS

Plaintiffs are siblings Martin, Christina, and Charlene Floreani. Final Report (Dkt. 59) at 3 (A1013). Martin founded the Company and served as its Chief Executive Officer for 12 years until 2018. *Id.* at 4 (A1014); Tr. (Dkt. 58) at 11:13–14 (A0747) After Martin left the company as CEO, Plaintiffs' brother, Mark Floreani, assumed and has served in that position for the past six years. Final Report (Dkt. 59) at 4 (A1014); Tr. (Dk. 58) at 11:20 (A0747). FloSports is a privately held Delaware corporation, based in Austin, Texas, that streams live sporting events and related editorial content worldwide through a subscription-based model. Final Report (Dkt. 59) at 3 (A1013).

The Floreanis collectively hold 1,700,013 shares of common stock in the Company as follows: Martin Floreani holds 1,600,166 shares of common stock of the Company; [1] Christina Floreani holds 53,090 shares of common stock of the Company; and Charlene Floreani holds 46,757 shares of common stock of the

[1] On May 31, 2023, Martin Floreani requested that the Company approve the transfer of the shares from MMF to his own name for estate planning purposes. The Company finally approved the transfer on July 21, 2023, more than two weeks after the Floreanis commenced this action. *Id.* at 9 (A1019). The transfer was finalized on August 2, 2023. *Id.* at 9–10 (A1019–1020). The shares held by MMF and transferred to Martin Floreani are subject to the FloSports, Inc. Second Amended and Restated Right of First Refusal and Co-Sale Agreement, dated May 23, 2019 (the "ROFR"). *Id.* at 4 (A1014). Christina Floreani's and Charlene Floreani's shares are not subject to the ROFR. *Id.* at 4 (A1014).

Company. *Id.* at 3 (A1013). After more than six years in which the Company failed to share any financial information, *Id.* at 3–4 (A1013–1014); Tr. (Dkt.58) at 25:21–26:10 (A0760–0761), the Floreanis decided to value and monetize their shares. Tr. (Dkt.58) at 21:22–22:1 (A0757–0758). Commencing in November of 2022, the Floreanis and certain other holders served and attempted to negotiate Section 220 demands for inspection of FloSports's books and records. Final Report (Dkt. 59) at 6 (A1016). On November 18, 2022, Plaintiffs' counsel served the initial demand on the Company (the "Initial Demand"). *Id.* FloSports denied the request alleging the Initial Demand failed to satisfy the form and manner requirements of Section 220, but voluntarily engaged with Plaintiffs' counsel. *Id.* Aware of the Plaintiffs' purpose, the Company sought to limit its production of books and records to Audited Financials for years 2019, 2020, and 2021; Internal 2022 Financials (audit not yet complete); 409A Valuation Reports; Debt Schedule as of December 31, 2022; a redacted Capitalization Table as of February 23, 2023; and certain forecasts of key operating results through 2025. *Id.* at 7 (A1017).

FloSports admitted at trial that it did not intend to cooperate with the Floreanis because it did not view that to be in the interests of the Company without regard to the Floreanis' interests as shareholders and raised procedural obstacles and delays where it could. *See* Tr. (Dkt. 58) 258:1-264:3 (A0994–A1000). FloSports also admitted that it failed to hold a single shareholders meeting for the six years after

Martin left the company. *See id.* at 208:14-209:13 (A0994). Therefore, after months of negotiations and the failure to reach agreement with respect to the limited production, on June 20, 2023, MMF, Christina Floreani, Charlene Floreani, and John Joseph Williamson issued a second demand (the "Second Demand" or the "Amended Demand") requesting inspection of all the same documents as the Initial Demand. Final Report (Dkt. 59) at 9 (A1019); Pl. Pre-Trial Br (Dkt. 47) at 13 (A0706). The Company rejected the Second Demand and on July 5, 2023, MMF, Christina Floreani, Charlene Floreani, and John Joseph Williamson filed their complaint (the "Complaint") on July 5, 2023. *See* JX 1 (Dkt. 1)(A0036); Pl. Pre-Trial Br. (Dkt. 47) at 10–11 (A0703–0704).

Among its other issues with the Complaint, the Company suggested that Plaintiffs lacked standing because the subsequent transfer of MMF shares to Martin Floreani (described in footnote 1 above) conflicted with the filing of the complaint by MMF while MMF held those same shares. Final Report (Dkt. 59) at 10–11 (A1020–1021); Company's Exceptions (Dkt. 69) at 21 (A1087); Tr. (Dkt. 58) 255:9–12 (A0991-0994). Martin Floreani made the request on May 31, 2023, and the Company completed the request on July 21, 2023 after the Complaint was filed. Pretrial stipulation (Dkt. 45) at ¶21 (A0603). In response, on September 12, 2023, Martin Floreani sought to transfer 100,000 shares of common stock back to MMF to remedy that concern. Final Report (Dkt. 59) at 10 (A1020). The Company,

however, incredulously claimed that this transfer, unlike the original one, would be subject to the ROFR and therefore, causing the transfer was discontinued. *Id.*; Tr. (Dkt. 58) 255:5–256:6 (A0991–0992). In addition, after the Complaint was filed Mr. Williamson sought to withdraw from the Section 220 Action. Mot. for Leave to File Am. Compl. (Dkt. 26) at 5 (A0232).

On September 27, 2023, in light of the Company's unwillingness to consent to the substitution of Martin Floreani for MMF and the withdrawal of Mr. Williamson from the Section 220 Action, the Plaintiffs (1) served a new and complete third demand on the Company and (2) filed a motion to amend the Complaint pursuant to Chancery Court Rule 15 to replace MMF with Martin Floreani and to remove John Joseph Williamson. *Id.* at 1 (A0228). Later, at trial, counsel for the Company expressly stipulated that the Third Demand complies with the form and manner requirements of Section 220, stating:

> We have no problem with the third demand. We have no issue with the signature on the third demand. Just to save time, we'll stipulate that that demand complies with the form and manner requirements and we can move on.

Tr. (Dkt. 58) 21:5–10 (A0757).

On October 3, 2023, Magistrate Mitchell granted the Floreanis' motion to amend the Complaint and on the following day, October 4, 2023, FloSports denied and refused to comply with the September 27th Demand. Accordingly, on October

10, 2023, the Floreanis filed and served their amended complaint (the "Amended Complaint"). Final Report (Dkt. 59) at 11, 15 (A1021, A1025). Despite the Company's jurisdictional challenge during the October 6th teleconference, the Magistrate found that Plaintiffs had "[waited] the required five days to serve the amended complaint." *Id.* at 11 (A1021).

The trial was held on November 8, 2023, and Magistrate Mitchell issued her Final Report in favor of Plaintiffs. *Id.* at 12, 31 (A1022, A1041). As stated in her Addendum, Magistrate Mitchell found that Plaintiffs' "allegations may warrant a credible basis for fee shifting." Addendum (Dkt. 63) at 3 ¶4 (A1051).

On June 3, 2024, the Company filed an extensive series of exceptions to Magistrate Mitchell's Final Report, including a challenge to the form and manner of the Plaintiffs' Section 220 demand generally despite counsel's stipulation at trial. *See* Company's Exceptions (Dkt. 69) (A1060–1127). On October 31, 2024, Chancellor McCormick of the Court of Chancery issued a letter decision (the "Chancery Decision") in favor of the Company denying relief to the Plaintiffs. Letter Decision (Dkt. 80) at 1–5. The Letter Decision is attached hereto as **Exhibit A**. First, the Chancery Court found that the Initial Demand and the second or Amended Demand did not comply with the form and manner requirements of Section 220 without commenting on the form of and manner of the Third Demand. *See id.* at 4 (A1597). In addition, the Chancery Court held that the Third Demand

violated the five business day rule under Section 220(c) because the motion to amend the original Complaint, as opposed to the approved Amended Complaint, was filed on the same day as the Third Demand. *Id.* The Chancery Decision contained that finding despite the fact that the Amended Complaint was not filed or served before nine business days had passed since the Third Demand was issued.

On November 27, 2024, the Plaintiffs filed a notice of and now seek the reversal of the Chancery Court Decision.

ARGUMENT

I. THE CHANCERY COURT ERRED AS A MATTER OF LAW BECAUSE THE PLAINTIFFS' MOTION TO AMEND THEIR COMPLAINT IN RESPECT OF THE THIRD DEMAND DID NOT CONSTITUTE THE FILING OF THE AMENDED COMPLAINT FOR PURPOSES OF THE FIVE BUSINESS DAY PERIOD UNDER SECTION 220(C).

The first issue presented by this appeal concerns the Floreanis' compliance with Section 220(c). Despite the fact that the Floreanis did not file their Amended Complaint until nine business days after serving the Third Demand, the Court of Chancery determined that the Floreanis violated the five business day rule of Section 220(c). The Court of Chancery incorrectly concluded as a matter of law that the Floreanis' motion to amend their Complaint was the equivalent of the filing of the Amended Complaint. This result is belied by the Court of Chancery's rules which clearly distinguish between a motion to amend a complaint and the actual filing of an amended complaint. Accordingly, the Court of Chancery's decision should be reversed.

A. Question Presented

Whether the filing of Plaintiffs' Amended Complaint complied with the five business day rule of Section 220(c) when the Third Demand was served on September 27, 2023 and the Amended Complaint, as opposed to the motion to

amend their original Complaint, was filed on October 10, 2023, nine business days after service of the Third Demand.

This question was raised before the Court of Chancery. Letter Decision (Dkt. 80) at 1–5.

B. Standard of Review

In a section 220 action, whether the filing of the Amended Complaint complied with Section 220(c) is a question of law and thus, the Court of Chancery's decision in respect of this matter is reviewed *de novo*. *See, e.g.*, *KT4 Partners LLC v. Palantir Technologies Inc.*, 203 A.3d 738, 748-749 (Del. 2019).

C. Merits

In making its determination that the Floreanis failed to comply with Section 220(c)'s requirements of a five business day waiting period, the Court of Chancery ignored its own Rule 15(a)(3) and improperly conflated the filing of the motion to amend the Complaint with the filing of the Amended Complaint itself. On this basis, the Court of Chancery's decision with respect to the Company's exceptions should be reversed.

Section 220(c) sets forth in pertinent part:

> If the corporation, or an officer or agent thereof, refuses to permit an inspection sought by a stockholder or attorney or other agent acting for the stockholder pursuant to subsection (b) of this section or does not reply to the demand within 5 business days after demand has been

> made, the stockholder may apply to the Court of Chancery for an order to compel such inspection.

8 Del. C. §220(c). Court of Chancery Rule 15(a)(3) provides that in order to be effective "[a] party must file an amended pleading with the Court, even if the Court has granted a motion for leave to file the amended pleading." Del. Ct. Ch. R. 15(a)(3).

The Chancery Court took issue with the fact that Plaintiffs' *motion to amend the Complaint* was filed on the same day as the Third Demand was served. *See* Letter Decision (Dkt. 80) at 4. The Company argues that the Floreanis failed to comply with Section 220(c)'s five business day response period which requires a shareholder to wait five business days following service of a written demand before the shareholder can file suit. But as Magistrate Mitchell correctly found in her Final Report, Plaintiffs did not file their *complaint* the same day they served the Amended Renewed Demand. Rather, they only filed their motion for leave to amend their complaint on that date. Final Report (Dkt. 59) at 15, n.64 (A1025).

Specifically, the Third Demand was filed on September 27, 2023. On that same day, Plaintiffs filed their *motion to amend their Complaint* as a result of the Company's refusal to consent to the substitution of Martin Floreani for MMF and for John Joseph Williamson to be dismissed. *See* Mot. for Leave to File Am. Compl. (Dkt. 26) at 1–11 (A0228-0238). On October 3, 2023, Magistrate Mitchell granted

the Floreanis' motion to amend the Complaint. Order Granting Leave to Amend (Dkt. 27) (A0361). On October 4, 2023, the Company for the third time rejected the Floreanis' demand. Final Report (Dkt. 59) at 12 (A1022). By that time, the disputes between the Floreanis and the Company had been pending for eleven months. The Floreanis then allowed several more days to pass and in fact only filed their *Amended Complaint* on October 10, 2023—nine business days after serving the Third Demand on the Company. *Id.* at 15 (A1025). Magistrate Mitchell, therefore, "maintained jurisdiction over the Plaintiffs' originally filed complaint related to the [Renewed] Demand." *Id.* at 14 (A1024).

Instead of addressing or considering Rule 15(a)(a)(3) in the Chancery Court Decision, the Court of Chancery cited two cases that describe the five business day waiting period generically. *See* Letter Decision (Dkt. 80) at 4 n.8; *Katz v. Visionsense Corp.*, 2018 WL 58303214 at *8 and *MaD Investor GRMD, LLC v. GR Cos., Inc.*, 2020 WL 6306028 at *2-5. There is no dispute as to what these cases hold. In *Katz*, where the plaintiff served his demand on April 24, 2018, and four business days later, on April 30, 2018, "filed [the] action," the court dismissed the action. *See Katz* at *1.[2]

[2] Interestingly, the court noted in *Katz*, to the extent "a stockholder has served a new curative demand and satisfied all the requirements for proceeding on that demand, [the Court of Chancery] has permitted a stockholder to amend its previously

Similarly, in *MaD Investors*, the plaintiffs served their demand on July 9, 2020, and then filed a verified complaint on July 16, 2020, less than five full business days later, and there is no discussion or analysis of the similarities or distinctions between a motion to amend a complaint versus the filing of a complaint itself. *See MaD Investors,* 2020 WL 6306028 at *4-5. Magistrate Mitchell, however, noted this distinction in the Final Report stating:

> In *MaD Investors*, the plaintiffs filed their 220 complaint the evening before the statutory 5-day period lapsed, and the Court dismissed the complaint with prejudice. But here, Plaintiffs did not file a complaint. They requested leave to amend their complaint.

See Final Report (Dkt.59) at 15, n.64 (A1025).

Accordingly, when the cases are considered in conjunction with Rule 15(a)(3), the Court of Chancery erred as a matter of law in equating the motion to amend the Complaint with the filing of the Amended Complaint itself. The motion to amend did not constitute the filing of an action or complaint. Had FloSports timely complied with the Third Demand issued on September 27th in its October 4th response, then the Floreanis would have had no need to proceed with the Amended Complaint on October 10th. Not surprisingly, in the eleventh month of the contentious engagement between the parties, FloSports did not.

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defective complaint and proceed on the second demand." *See id., citing, Gay v. Cordon Int'l Corp.,* 1978 WL 2491, *1 (Del. Ch. Mar, 31, 1978); and *Frank v. Libco Corp.*, 1992 WL 364751, at *2-3 (Del Ch. Ct. Dec. 8, 1992).

In the end, finding in favor of the Company required the Court of Chancery to adopt a legally erroneous proposition: that the motion to amend the Complaint, before such a motion is considered or granted, constituted commencing an action. Such a conclusion runs afoul of all the case law that examines actions under Section 220 and Rule 15(a)(3) of the Chancery Court which clearly distinguishes between the two. Therefore, the Chancery Court Decision should be reversed.

II. THE CHANCERY COURT ERRED IN CONCLUDING THAT FLOREANIS, FOUNDING SHAREHOLDERS OF FLOSPORTS, DID NOT SATISFY THE FORM AND MANNER REQUIREMENTS OF SECTION 220 WHERE THE FORM AND MANNER OF THE THIRD DEMAND WAS NOT IN DISPUTE.

This Court has previously held that it "may rest its appellate decision on any issue that was fairly presented to the Court of Chancery even if that issue was not addressed by that court." *Central Laborers Pension Fund v. News Corp.*, 45 A.3d 139, 141 (Del. 2012). Accordingly, the Plaintiffs address below the other issues implicated in the Chancery Court Decision despite the Court of Chancery's silence on those points. By pointing out the perceived deficiencies with respect to the Initial Demand and the second, Amended Demand, the Court of Chancery suggests that the form and manner requirements of Section 220 were not satisfied despite the Company's express stipulation that the Third Demand fulfilled Section 220's requirements. Through their Third Demand, the Floreanis, as founding shareholders of privately-held FloSports, satisfied the requirements of Section 220 of the Delaware General Corporation Law.

A. Question Presented

Whether the Third Demand and the testimony presented at trial before Magistrate Mitchell established that the Plaintiffs were entitled to the books and records requested in the Third Demand by a preponderance of the evidence.

B. Standard of Review

Appellate consideration of this Section 220 action raises mixed questions of law and fact. Questions of law, as to which types of books and records are included in the demand, are subject to *de novo* review, and factual questions regarding the scope of relief and any limitations on that relief are subject to an abuse of discretion standard. *See KT4 Partners*, 203 A.3d at 748-749.

C. Merits

The Court of Chancery did not make any determinations beyond its findings on the two exceptions covered in the Chancery Court Decision and effectively abused its discretion with respect to the scope of relief. Under Section 220 (b), plaintiffs must prove three elements by a preponderance of the evidence: (i) that plaintiffs were stockholders at the time of the demand; (ii) that plaintiffs complied with the statutory requirements for making a demand, and (iii) that plaintiffs have a proper purpose for conducting the inspection of the company's books and records. *Lebanon Cnty. Emps' Ret. Fund v. Amerisourcebergen Corp*., 2020 WL 132752 at *6 (Del. Ch. Jan. 13, 2020), *aff'd*, 243 A.3d 417 (Del. 2020); *Pettry v. Gilead Scis., Inc*., 2020 WL 6870461 at *9 (Del. Ch. Nov. 24, 2020), judgment entered, *Pettry v. Gilead Scis., Inc.,* 2020 WL 7773438 (Del. Ch. Dec. 28, 2020). As to the first element, both parties have already stipulated that the Floreanis are stockholders. Final Report (Dkt. 59) at 13 (A1023); Pretrial Stipulation (Dkt. 45) ¶¶ 32–35

(A605). Similarly, as to the second element, the form and manner requirements of Section 220, FloSports stipulated that the Third Demand complied with the form and manner requirements of Section 220. Tr. (Dkt. 58) 21:5–10 (A0757) (Mr. Reed: "we'll stipulate that [the] demand complies with the form and manner requirements, and we can move on."). At trial, the Floreanis proved by a preponderance of the evidence that they were shareholders at the time of the Amended Renewed Demand and that they had a proper purpose—valuation of their shares—when the Third Demand was served. Final Report (Dkt. 59) at 13. 16–17 (A1023; 1026–1027).

1. The Company Admits that the Floreanis Were Shareholders at the Time of the Third Demand.

Despite the fact that the Company stipulated that the Floreanis were shareholders at the time the Third Demand was served, *Id.* at 13 (A1023), Pretrial Stipulation (Dkt. 45) ¶¶ 32–35 (A0605), the Company subsequently attempted to re-open even the most basic question here—whether the Floreanis were shareholders at the time the Third Demand was served. Company's Exceptions (Dkt. 69) at 25 (A1091). Martin, Christina and Charlene Floreani have held their shares in the Company which in part bears their name, since its incorporation and remain stockholders. Pretrial Stipulation (Dkt. 45) ¶¶ 1–2 (A0600). At no point did FloSports ever dispute that Christina Floreani and Charlene Floreani were

shareholders in FloSports at all times relevant to this Section 220 action or at any time prior to this Action.[3]

2. As Agreed by FloSports at Trial, the Floreanis' Third Demand Fulfills the Form and Manner Requirements of Section 220.

The Company expressly stipulated at trial that the Third Demand complied with the form and manner requirements of Section 220, Tr. 21:5–10. Simply stated, Section 220 requires merely that the demand (i) be made in writing under oath, (ii) be directed to the company at its registered office in Delaware or at its principal place of business, and (iii) state its purpose. The Third Demand satisfies each of these requirements.

First, the Floreanis made their Third Demand in writing, on counsel's letterhead. *See* JX 28 (A0202). Second, it was made under oath pursuant to signed copies of the Special Power of Attorney and the Affidavits.[4] *See* JX 28, Exs. B-1

[3] Despite previously stipulating to this fact on the record, the Company subsequently attempted to divert and distract the Chancery Court by asserting that a Common Interest Agreement, JX 26 (A0025), among certain shareholders—to which the Company is not a party—somehow deprived Plaintiffs of their standing to pursue a 220 action by relinquishing all rights to MMF. Company's Exceptions (Dkt. 69 at 24. The Company's argument, made without citation to any precedent, fails. First, the Company is not a party to the Common Interest Agreement and therefore lacks any standing to enforce its terms. *See* JX 26 § 1 (A0025); Final Report (Dkt. 59) at 17 (A1027); Pre-trial Stipulation (Dkt. 45) at ¶¶5 (A601). Second, nowhere in the Common Interest Agreement do the Floreanis cede their Section 220 rights to MMF or anyone else. *See* JX 26 (A0025–A0029).

[4] The Chancery Court attempts to impose a new requirement in its decision stating that the second, Amended Demand failed "because counsel for Plaintiffs signed the

(A0217), B-2 (A0220), B-3 (A0222). Third, Plaintiffs stated in the Third Demand that "[t]he purpose of this demand is to value their stock." *See* JX 28 at 2 (A0203). Finally, the Third Demand was delivered to the Company by hand-delivery at its registered agent in Dover, Delaware, and by Federal Express to the Company at its principal place of business in Austin, Texas. *See id.* at 1 (A0202).

FloSports cannot sustain the jurisdictional challenge as required by *MaD Investors GRMD, LLC v. GR Cos., Inc.*, 2020 WL 6306028 at *2 (Del. Ch. Oct. 28, 2020) it posed in the Court of Chancery, as it conceded that the Third Demand itself was timely and waived its right to litigate the motion to amend the Complaint by not opposing the motion before it was granted. Final Report (Dkt. 59) at 14 (A1024); Tr. (Dkt. 58) 21: 6–10 (A0757) ("We have no problem with the third demand.").

3. The Floreanis' Third Demand was Made for a Proper Purpose.

The Floreanis' primary purpose under the Third Demand has been to value their shares in what is a closely-held private company. Tr. (Dkt. 58) 21:22–22:1 (A0757–A0758). Martin Floreani testified that his sole asserted purpose for the

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oath instead of Plaintiffs." Letter Decision (Dkt. 80) at 4. Then despite the extensive case law in this area requiring strict adherence to Section 220's requirements, the Court of Chancery appears to add a requirement not in Section 220 suggesting that "the stockholder "must sign the oath" even though the Court admits that "Section 220 does not expressly state that[.]" *See id.* In view of the propriety and acceptance by both sides of the Third Demand, the Court of Chancery's discussion of this point is misplaced and constitutes *dicta* at best.

Amended Renewed Demand "is to value [his] shares so [Plaintiffs] can monetize them." *Id.* at 42:10–14 (A0778). Valuation of stock is unequivocally a proper purpose for a Section 220 demand. *CM & M Grp., Inc. v. Carroll*, 453 A.2d 788, 792 (Del. 1982); *Woods Tr. of Avery L. Woods Trust v. Sahara Enters*., Inc., 238 A.3d 879, 891 (Del. Ch. 2020). "[O]nce a stockholder has identified a proper purpose . . . the burden shifts to the corporation to prove that the stockholder's avowed purposes is not her actual purpose and that her actual purpose for conducting the inspection is improper." *Woods*, 238 A.3d at 891. A mere showing that a plaintiff has a secondary improper purpose will not suffice. *Id.; CM & M Grp., Inc*., 453 A.2d at 792 ("any secondary purpose or ulterior motive of the stockholder becomes irrelevant"). Rather, the corporation must show that the plaintiff's stated purpose is mere pretext and that the actual purpose "is something unrelated to the plaintiff's purpose as a stockholder." *Sutherland v. Dardanelle Timber Co*., 2006 WL 1451531, at *9 (Del. Ch. May 16, 2006). This showing "is fact intensive and difficult to establish." *Pershing Square, L.P. v. Ceridian Corp*., 923 A.2d 810, 817 (Del. Ch. 2007).

The evidence adduced at trial clearly established that the Floreanis' primary and only purpose in serving the Third Demand was to value their shares. Martin Floreani testified that the purpose in making the demand was "[to] get information so [Plaintiffs] can value [their] shares, and ultimately so [they] can monetize the

shares." Tr. (Dkt. 58) at 21:22–22:1 (A0757–A0758). Further, Sudhin Roy testified at trial that he and Kinetic "were retained to evaluate the securities . . . and then, ultimately, to find a way to monetize these shares for the benefit of the holders." Tr (Dkt. 58). at 102:20–24 (A0838).

Delaware courts have long recognized that minority stockholders of private corporations face "certain unique risks" because they do not receive the same periodic financial disclosures to which stockholders of public companies are entitled. *Quantum Tech. Partners IV, L.P. v. Ploom, Inc.*, 2014 WL 2156622, at *8 (Del. Ch. May 14, 2014). As a result, often the only option for minority stockholders of closely held corporations interested in valuing their shares is to inspect the relevant books and records. *Id.* at *8, n.70. Here, as is often the case in closely held private corporations, the Floreanis have not received financial information from Company since 2018. Tr. (Dkt. 58) at 115:3–4 (A0851). The Floreanis only option, therefore, is to inspect the Company's books and records in order to value their shares.

Notwithstanding the trial testimony, the Company asserted before the Chancery Court that Plaintiffs' purpose was pretextual. The Company pointed to videos posted *privately* by Martin Floreani where he expresses his frustration with the Company. This has no bearing on his or his sisters' purpose or rights for information under Delaware law. Further, the Company has alleged that Martin

Floreani's new company, Rokfin, competes with the Company. However, Martin Floreani explained at trial, and Magistrate Mitchell agreed, that his new company, Rokfin, does not compete with FloSports because Rokfin is not in the same line of business as FloSports and offers different services. *Id.* at 17:2–18:3 (A0753–A0755).

None of these allegations, regardless of their accuracy, negate or override the record which clearly demonstrates that the purpose of the Third Demand was to value the Floreanis' shares. *See* Tr. (Dkt. 58) 20:14–22:1 (A0756–A0758). Martin Floreani wishes to value his shares so that he can monetize them and end his relationship with the Company. *Id.* Tr. 12:5–8 (A0748); 16:17–23 (A0752); 21:22–22:1 (A0757–A0758). The Company had the opportunity to introduce or adduce evidence regarding some other purpose, but it did not because there is no ulterior motive.

If anything, the Company's refusal to comply with the Floreanis' Section 220 demand was pretextual. The Company pitched hyper-technical defenses under Section 220 for one simple purpose—to prevent Martin Floreani and his sisters from monetizing their shares. The Company has apparently believed that a sale of the shares will allow Martin Floreani to compete with the Company. *See* Final Report (Dkt. 59) at 1, 20 (A1012, A1030). As Martin Floreani testified: "everyday that [he] [doesn't] have the information is a day that [he] can't value [his] shares. And [if]

[he] can't value [his] shares, they're not monetized, and then [he's] not a threat to the [C]ompany." Tr. (Dkt 58) at 41:13–19 (A0777). Even if Martin Floreani's company, Rokfin, was a direct competitor to the Company—Delaware law makes clear that a stockholder's status as a competitor is not a valid defense to a proper demand. *Kortum*, 769 A.2d at 124 ("A stockholder's status as a competitor may limit the scope of, or require imposing conditions upon, inspection relief, but that status does not defeat the shareholder's legal entitlement to relief."). Martin Floreani and his sisters have waited for six years for an opportunity to exit the Company and sell their shares. Instead of being provided an opportunity to do so, the Company has done everything in its power to prevent them from doing so.

4. The Documents Demanded by the Floreanis Are Necessary and Essential to Value their Shares

The documents that the Floreanis have requested are necessary and essential to value their shares and their requests are consistent with the case law. These documents are especially necessary and essential in light of the facts that the Floreanis had historically been shut out from FloSports and FloSports had held no shareholder meetings since 2018. Final Report (Dkt. 59) at 3 (A1013); Tr. (Dkt. 58) 25:21–26:10 (A0761–A0762). "Documents are necessary and essential pursuant to a Section 220 demand if they address the crux of the shareholder's purpose and if that information is unavailable from another source." *Wal-Mart Stores, Inc. v.*

Indiana Elec. Workers Pension Tr. Fund IBEW, 95 A.3d 1264, 1271 (Del. 2014) (internal citations and quotations omitted). Whether certain documents meet this requirement "is fact specific and will necessarily depend on the context in which the shareholder's inspection arises." *Espinoza v. Hewlett-Packard Co.*, 32 A.3d 365, 372 (Del. 2011). A court is required to grant the plaintiff "everything that is 'essential' but stop at what is sufficient." *KT4 Partners LLC v. Palantir Techs. Inc.*, 203 A.3d 738, 757 (Del. 2019).

To that end, the Floreanis, on the advice of their independent advisor, Sudhin Roy, who has thirty years of experience as an investment banker, requested a series of documents in their Amended and Restated Demand for valuation purposes. Tr. (Dkt. 58) 111:1–128:24 (A0847–A0864). Mr. Roy testified why each such category of documents and information set forth below was important to the valuation of a privately held company such as FloSports (and his testimony was not controverted). *See id*. Pl. Brief in Opposition to Exceptions (Dkt. 71) at 32 (A1442)

5. Intermediate Production of Documents Does Not Mitigate the Need for a Continuing Duty to Produce Documents

This Court has held that "subsequent updated information must be deemed equally 'essential' in valuing his shares – without the necessity of instituting new actions periodically for that purpose." *CM & M Grp., Inc*., 453 A.2d 788, 794 (Del. 1982); *see also Quantum Tech. Partners IV, L.P.* 2014 WL 2156622 (Del. Ch. May

14, 2014) (plaintiffs are entitled to up to date information relying on *Carroll*); S*outhpaw Credit Opportunity Master Fund LP v. Advanced Battery Techs.*, *Inc.*, 2015 WL 915486, at *2 (Del. Ch. Feb. 26, 2015) (company was required to produce quarterly statements for the last 12 months because the recent quarterly financials were necessary to give the plaintiffs sufficient data to "produce a reliable valuation).

Here, Plaintiffs requested among other things, financials from 2018 through the present. Final Report (Dkt. 59) at 24 (A1034). Mr. Roy explained that for valuation purposes, Plaintiffs needed both historic and up-to-date financials to understand the Company's current financial health. Tr. (Dkt. 58) 112:17–114:13 (A0848–A0850). Consistent with *Quantum*, *Southpaw*, and *Carroll*, Magistrate Mitchell correctly ordered the Company to produce the remaining set of these documents. Final Report (Dkt. 59) at 26–27 (A1036–1037).

Consistent with this Court's holding in *CM & M Grp.*, the Floreanis will have a continuing need for the information requested on an updated basis in order to value and potentially transaction their minority position in the Company. *CM&M Grp,* 453 A.2d at 794. Nothing stops FloSports from arbitrarily deciding whether to cooperate or not with any process in which the Plaintiffs engage with respect to their shares given the latest ruling. To date, FloSports has appeared to be more preoccupied with limiting the rights of the Floreanis as holders regarding perceived competition issues rather than assisting them with respect to their shares and separate from the

Company. For these reasons, reversal of the Chancery Court's decision is critical to create a balance between the company's interests on the one hand the rights of the Floreanis, as shareholders on the other hand.

CONCLUSION

For the reasons set forth herein, the Floreanis hereby request reversal of the decision of the Court of Chancery and such other and further relief as may be just and proper.

Dated: January 17, 2025
Wilmington, Delaware

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CERTIFICATE OF SERVICE

I, Scott J. Leonhardt, hereby certify that on January 17, 2025, a true and correct copy of the Plaintiffs' *Corrected Opening Brief* was served upon Defendant's counsel in the manner indicated below:

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