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Case Number 491,2024

IN THE SUPREME COURT OF THE STATE OF DELAWARE

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

APPELLANTS' REPLY BRIEF

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INTRODUCTION[1]

In its Answering Brief, FloSports seeks to distract this Court from its counsel's key concession at the trial before Magistrate Mitchell in this matter: that is, that the Third Demand satisfied Section 220's form and manner requirements. Indeed, FloSports does not even admit in the extensive discussion of the demands in its Statement of Facts that it stipulated to the sufficiency of the Third Demand or that the Court of Chancery did not question its adequacy in its letter opinion. Instead, FloSports, like the Court of Chancery in its letter opinion, spends pages addressing the purported deficiencies of the First and Second Demands before it concedes that FloSports stipulated that the Third Demand complies with the form and manner requirements of Section 220. Thus, it unequivocally waived the right to challenge the form and manner of the Third Demand (or for that matter the First or Second Demand) at trial. Moreover, as FloSports itself points out, the Court of Chancery's single critique of the Second Demand is just wrong as a matter of fact. Accordingly, the Court of Chancery's decision as to the adequacy of the Floreanis' demand must be reversed as a matter of law.

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[1] Capitalized terms not defined herein shall have the meanings ascribed to them in the Floreanis' Corrected Opening Brief ("Opening Brief" or "Op. Br. __"). Citations to FloSports' Answering Brief are "Answering Brief" or Ans. Br. __." References to the Record refer to Petitioner's Appendix.

Then, despite its purported desire for strict adherence to Section 220 and the Rules of the Court of Chancery, FloSports attempts to conflate the Plaintiffs' motion to amend their complaint with the filing of the actual amended complaint after the motion to amend was considered. If allowed to stand, such an interpretation would effectively eviscerate the Court of Chancery's obligation to consider a motion to amend under Rule 15. As Magistrate Mitchell noted, the Floreanis made clear in that motion to amend that they would wait the requisite five business days before serving the amended complaint despite the fact that it had become clear that FloSports would yet again (and did) refuse to provide the books and records requested.

Nevertheless, FloSports maintains this position despite having failed to object timely to the Floreanis' motion to amend their complaint. It does not dispute that:

1. On September 27, 2023, the Floreanis delivered the Third Demand and filed and served the motion to amend the complaint in which they expressly stated that they would not file the Amended Complaint (if the motion to amend was granted) until at least five business days had passed;
2. On October 3, 2023, having failed to receive an objection from FloSports to the motion to amend the complaint, Magistrate Mitchell granted the motion to amend pursuant to Court of Chancery Rule 15;

3. On October 4, 2023, FloSports belatedly opposed the motion to amend and, consistent with its prior practice, refused in writing to provide the documents requested in the Third Demand; and
4. On October 10, 2023, having allowed more than five business days to pass from the delivery of the Third Demand on September 27th, the Floreanis filed and served the Amended Complaint in compliance with Section 220.

The Court of Chancery did not make any finding contrary to any of the foregoing. Rather, at the suggestion of FloSports, the Court of Chancery effectively merged the motion to amend with the amended complaint itself in order to conclude as a matter of law that the Floreanis did not abide by Section 220 and thus, the Court of Chancery lacked jurisdiction. Neither FloSports nor the Court of Chancery has offered any precedent for the proposition that filing a motion to amend a complaint is the same as filing a complaint and thus, the Court of Chancery's decision in this respect should be reversed as a matter of law on this basis as well.

Finally, FloSports' third argument makes clear why the Floreanis require relief from this Court. Simply stated, FloSports intends to do whatever it takes to deprive the Floreanis of the value of their shares. Despite the fact that the Floreanis have been material holders of the shares in the Company since its founding, FloSports has imposed innumerable obstacles and made numerous allegations to avoid or limit sharing the information the Floreanis would need on an ongoing basis

to value and then sell their shares. While not addressed by the Court of Chancery in its decision, these obstacles and allegations were addressed by Magistrate Mitchell. For example, FloSports suggests, without any legal support, that the Common Interest Agreement into which the Floreanis entered somehow stripped them of their standing. Magistrate Mitchell correctly observed that FloSports is not a party to the Common Interest Agreement and it has no "implications" on the litigation. The Company also asserts that the Floreanis' "true purpose is to cause reputational harm to FloSports and gain a competitive advantage." After listening to the witnesses and examining the evidence, while Magistrate Mitchell did not deny that there is animosity between the parties, she concluded that "FloSports has not met its burden to prove that the Plaintiffs' purpose is to gain a competitive edge or cause reputational harm, rather than the stated purpose of valuing their shares." When considering the exceptions, the Court of Chancery made no finding contrary to Magistrate Mitchell's ruling and in fact, failed to give any consideration to the evidence presented with respect to the Floreanis' stated purpose. As to the information and documents requested, Magistrate Mitchell considered the uncontroverted testimony of the Floreanis' investment banker and evaluated each request in light of the Floreanis' stated purpose and the applicable case law. FloSports failed to identify any inconsistency between Mr. Roy's testimony and the information permitted under the case law. Notably, the Floreanis did not request

Board materials or other information or documents that could conceivably lend credence to FloSports' assertions of the Floreanis' ulterior motives. Finally, despite its attempts to create a side-show regarding confidentiality at trial in the context of a summary books and records proceeding, FloSports now suggests a standard confidentiality agreement approved in the *Schoon* case would not be enough to "protect" the Company from certain of its founding shareholders–whose substantial personal value continues to be held hostage. FloSports' strong-arm tactics and absolutist position are consistent with its fear that a sale of the Floreanis' shares will allow Martin Floreani to compete with the Company. FloSports continuously cries foul, but does not, because it cannot, allege any harm.

Ultimately, the Court of Chancery disregarded the evidence presented before Magistrate Mitchell at trial and drew two erroneous legal conclusions: first, that the Floreanis failed to satisfy Section 220's form and manner requirements despite the fact that FloSports even conceded this point at trial; and second, that the mere motion to amend a complaint constituted the filing of that amended complaint under Section 220 which did not occur until well after the five business day period had expired in which FloSports had refused to provide the information and documents requested. Should this Court affirm the Court of Chancery's decision, then private companies will have an unequivocal right to raise irrelevant obstacles to preclude shareholders from exercising the rights necessary to benefit from the property that they

unquestionably own. For these reasons and as stated below and in the Floreanis' opening brief, the Floreanis are entitled to reversal and judgment in their favor.

ARGUMENT

As the Floreanis noted in their Opening Brief, 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, the Floreanis went through an extended period of receiving absolutely no financial information regarding the Company. Tr. (Dkt. 58) at 115:3–4 (A0851). FloSports makes plain in Section III of its Answering Brief that it does not intend to provide anything further absent this Court's order to the contrary. Ans. Br. at 34-44.

I. FLOSPORTS CONCEDES THAT (A) THE THIRD DEMAND SATISFIED THE FORM AND MANNER REQUIREMENTS OF SECTION 220 AND WAIVED ANY ARGUMENT WITH RESPECT TO COMPLIANCE AND (B) THE COURT OF CHANCERY ERRED BY IGNORING THE OATHS DELIVERED BY THE FLOREANIS WITH THE SECOND DEMAND.

FloSports' principal argument, endorsing the Court of Chancery's decision, is that the First and Second Demands fail to satisfy the form and manner requirements of Section 220. See Ans. Br. at 19-21. The parties do not dispute what is required to satisfy Section 220's form and manner requirements. See 8 Del C. § 220. In fact, FloSports and the Floreanis have agreed in the context of the Third Demand. Tr. (Dkt. 58) 21:5-10 (A757). As pointed out in the Floreanis' opening brief, FloSports conceded the adequacy of the Third Demand at trial -- and deep in the Answering Brief it now characterizes its own statement at trial as an "acknowledgment" of such. *See* Ans. Br. at 32. Conspicuously, it only does so in the context of its jurisdiction argument so as to suggest that the existence of the Third Demand does not bear upon the Floreanis' compliance with the form and manner requirements of Section 220, but rather only to jurisdiction. Regardless, FloSports waived any argument as to form and manner once it conceded the sufficiency of the Third Demand. *See, e.g.,*

Med. Ctr. of Del., Inc. v. Lougheed, 661 A.2d 1055, 1060 (Del. 1995) ("[T]he failure to object generally constitutes waiver of the right subsequently to raise the issue.").

The Court of Chancery effectively admits the same in its letter decision. *See Floreani v. FloSports, Inc.,* No. 2023-0684-LM, 2024 WL 4637689, at *1-2 (Del. Ch. Oct. 31, 2024) (also attached as Exhibit A to Op. Br.) After dissecting the First Demand and incorrectly, the Second Demand, the Court of Chancery conveniently overlooks the existence of the Third Demand, FloSports' concession, and the Third Demand's compliance with the form and manner requirements of Section 220. *Id.* at *1-2. Instead, the Court of Chancery opted only to discuss the Third Demand in the context of jurisdiction. *Id.* at *2. The reason is apparent: Court of Chancery precedent permits otherwise. In this regard, the Court of Chancery has previously held that "in circumstances where a stockholder has served a new curative demand and satisfied all of the requirements for proceeding on that demand, [the Court of Chancery] has permitted a stockholder to amend its previously defective complaint and proceed on the second demand." *Katz v. Visionsense Corp.*, 2018 WL 3953765

at *2 (Del. Ch. Aug. 16, 2018), *citing among others*, *Gay v. Cordon Int'l Corp.,* 1978 WL 2491 at *1 (Del. Ch. Mar. 31, 1978).[2]

Now, to distract this Court from its waiver and concession, FloSports follows the Court of Chancery down the path of criticizing the First and Second Demands rather than evaluating the Third Demand. *See* Ans. Br. at 19-22. Trying to latch on to the Court of Chancery's decision, FloSports purports to re-examine the First and Second Demands despite the fact that it told Magistrate Mitchell in no uncertain terms that the Third Demand satisfied form and manner requirements. Final Report (Dkt. 59) at 14 (A1024). Nevertheless, FloSports cannot avoid the consequences of its prior strategic decisions and so its strategy falls short. Specifically, FloSports failed to question Mr. Floreani about the form of the Second Demand despite having the opportunity at trial. Tr. (Dkt. 58) 17:16-18 (A0908). Consequently, FloSports could only rely upon the limited questions and statements from Mr. Floreani's deposition in its Answering Brief – which, upon examination, failed to amount to much. As FloSports recounts it, when asked about the Second Demand, Mr. Floreani simply stated that he spoke to his lawyers about his affidavit and the Second

[2] That is what occurred here. Concerns were raised regarding the identity of the parties because FloSports refused to consent to the dismissal of one plaintiff and the substitution of another after it gamed the timing of the transfer of the shares from MMF Family Partners to its principal, Mr. Floreani. *See* Final Report (Dkt. 59) at 10-11 (A1020-1021).

Demand. FloSports ended its inquiry there and sought no further relief. See Ans. Br. at 22. Nevertheless, FloSports inexplicably thunders in conclusory fashion (without citation to the record or any support)[3] that "Plaintiffs' obstruction foreclosed any efforts by FloSports (and the trial court) to compare what Plaintiffs received on June 6 and 7, 2023, with what was executed by their counsel on June 20, 2023." *Id.* FloSports does not detail the purported "obstruction" or how it was "foreclosed" from any inquiry. Essentially, FloSports rewrites history to manufacture claims that the Floreanis or counsel impeded its efforts.

Despite the shots that FloSports takes at the First and Second Demands, FloSports cannot disregard the material flaw in the Court of Chancery's decision with respect to the Second Demand. Specifically, the Court of Chancery states that "The Second Demand fails too because counsel for the Plaintiffs signed the oath instead of Plaintiffs." *Floreani v. FloSports, Inc.*, 2024 WL 4637680 at *2 (Del. Ch. Oct. 31, 2024). This is the Court of Chancery's ***sole critique*** of the Second Demand. Attempting to downplay its significance, FloSports admits:

> Although there was no legal error in the court's ultimate conclusion that the Second Demand failed the "under oath" requirement, ***part of the court's analysis in getting to its conclusion requires correction.*** The court stated that "counsel for Plaintiffs signed the oath instead of

[3] In its analysis, FloSports conveniently overlooks the near substantial identity of the First Demand and the Second Demand, when it purports to question Mr. Floreani's familiarity with the contents of the Second Demand. *See* JX-1 (Dkt. 1) (A0061-A0077).

> Plaintiffs." (*Id.*) In fact, Plaintiffs' counsel executed the Second Demand pursuant to a "special power of attorney," dated June 20, 2023, ***but contrary to what is stated in the Opinion, Plaintiffs did sign the "under oath" affidavits***.

Ans. Br. at 20 (emphasis added). Thus, while the Court of Chancery attempted to take the Floreanis to task, the Court, by FloSports' own admission, erred as to a material element of the Second Demand that it overlooked. FloSports characterizes this error as "part of the court's analysis" when it is in fact the Court of Chancery's ***entire*** analysis. *Id.* Recognizing that this material error jeopardizes its case, FloSports asks this Court to affirm on different grounds, despite the Court of Chancery's error, citing *Unitrin, Inc v. Am. Gen. Corp.*, 651 A.2d 1361, 1390 (Del. 1995), while disregarding the equitable factors at play in that case and the importance of equitable considerations in deciding a matter on different grounds. *Id.* To proceed as FloSports suggests here would effectively allow the Court of Chancery's decision to stand despite (1) the Court of Chancery's material error in its sole comment regarding the Second Demand; (2) the Court of Chancery's failure to examine or consider the Third Demand; and (3) FloSports' waiver of its challenge to it.

II. FLOSPORTS FAILS TO SUPPORT ITS CONTENTION THAT THE FLOREANIS' MOTION TO AMEND THEIR COMPLAINT IN RESPECT OF THE THIRD DEMAND REPRESENTED THE FILING OF A COMPLAINT FOR PURPOSES OF THE FIVE BUSINESS DAY PERIOD UNDER SECTION 220(C).

FloSports does not contest any of the salient events leading up to the filing of the Amended Complaint. That is,

1. On September 27, 2023, the Floreanis delivered the Third Demand and filed and served the motion to amend the complaint in which they expressly stated that they would not file the Amended Complaint (if the motion to amend was granted) until at least five business days from the Third Demand had passed (*See* A0228-A0239);

2. On October 3, 2023, having failed to receive an objection from FloSports to the motion to amend the complaint, Magistrate Mitchell granted the motion to amend pursuant to Chancery Court Rule 15 (*See* A0361-A0362);

3. On October 4, 2023, FloSports belatedly opposed the motion to amend and, consistent with its prior practice, refused in writing to provide the documents requested in the Third Demand (*See* A0363-A0369); and

4. On October 10, 2023, having allowed more than five business days to pass from the delivery of the Third Demand on September 27th, the Floreanis

filed and served the Amended Complaint in compliance with Section 220 (*See* A0380-A0397).

Notwithstanding the time between the delivery of the Third Demand on September 27th, the rejection by FloSports on October 4th, and the filing of the Amended Complaint on October 10th, the Court of Chancery erroneously concluded that "Plaintiffs violated [the five-day period] by petitioning the court—through the motion to amend—to enforce the third demand before the statutory five-day period closed." See *Floreani*, 2024 WL 4637689 at *2. In support for this conclusion, the Court of Chancery cites in footnote 8 of its letter decision, *Katz*, 2018 WL 3953765 at *1 and *MaD Inv. GRMD, LLC v. GR Cos., Inc.*, 2020 WL 6306028, at *2-5 (Del. Ch. Oct. 28, 2020). *Floreani*, 2024 WL 4637689 at *2 n.8.

Neither of these cases stand for the proposition that a motion to amend a complaint violates the five-business day response period. In *Katz*, the plaintiff served his demand on April 24, 2018, and four business days later, on April 30th, Katz filed ***his action***. *Katz,* 2018 WL 3953765, at *1. The defendant did not respond before the action was filed. *Id.* at *1-2. In *MaD Investors*, the plaintiff served its demand on July 9, 2020, and its complaint on July 15th, then dismissed that complaint and filed its second complaint on July 16th. *MaD Inv.,* 2020 WL 6306028 at *2-5. Both complaints pre-dated the lapse of the five business day period. The court then expressly stated the rule that "stockholders may not file a ***lawsuit*** until either the

five-day response period has lapsed, or the corporation has affirmatively refused the demand before the end of the response period." *See Id.* at *2 (emphasis added). FloSports misleadingly relies on these and other cases all of which talk about the filing of a "complaint" or "lawsuit", not a motion to amend, but rather the legal equivalent of the Amended Complaint itself. *See* Ans. Br. at 24-32.

To adopt such a rule now would have a negative and consequential effect on the understanding as to Rule 15 and would erase the distinction between a motion to amend and the proposed amended pleading itself. The "merger" of the motion to amend with the filing of the complaint, or in this case, the amended complaint, would strip Court of Chancery Rule 15 of any meaning. In *Gay*, 1978 WL 2491 at *2, the court examined the application of Rule 15 and clearly highlighted its distinction from the underlying pleadings themselves quoting at length this Court's decision in *Bellanca Corp. v. J.G. Bellanca*, 169 A.2d 620, 622 (Del. 1961):

> This rule is written upon the assumption that pleadings are not an end in themselves but are designed to assist, not deter, the disposition of litigation on its merits. ***Motions to amend the pleadings are always addressed to the discretion of the trial judge.*** A trial judge in his discretion must always permit or deny the amendment by weighing the desirability of ending the litigation on its merits against possible prejudice or surprise to the other side.

Thus, the court in *Gay* clearly drew a distinction between a motion to amend a pleading and the amended pleading itself. Furthermore, as the Floreanis noted in their Opening Brief, 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); Op. Br. at 13.

It was not a foregone conclusion that Magistrate Mitchell would permit amendment of the original Complaint or that the parties would not strike an agreement that would eliminate the need to file the Amended Complaint after the five business day window had passed. A closer examination into the facts reveal what had actually occurred in context. Magistrate Mitchell, who scrutinized the developments in this case, did not appreciate the "gamesmanship" evidenced by FloSports as set forth in her lengthy footnote 49 which states in pertinent part:

> Prior to Plaintiffs filing this action [on July 6th], the Company hadn't approved Martin Floreani's request to transfer his shares he made on May 31, 2023. ***The Company waited until after this action was filed. D.I. 41 (Tr. 16:1-15).*** After this 220 action was filed, the Company changed position and agreed to effectuate the transfer, D.I. 41 (Tr. 16:14-19, telephone Status Conference)—seemingly later to challenge standing as mentioned during the heated phone conversation between the parties during discovery. *Id*. After the transfer, the Plaintiffs needed to name Martin personally, from the company MMF—the family company always owned by Martin Floreani and his wife. When Plaintiffs filed leave to Amend on September 27th, the Company remained silent for nearly a week in this summary proceeding until I granted the motion, raising the jurisdiction issue only on October 4th (D.I. 29) when they were already aware of the third demand. Despite this defect, once the issue had been cleared and the parties updated, I maintained the very strict 5-day waiting requirement under Delaware law.

(See A1022.) Nothing in the Court of Chancery's decision nor in the Answering Brief, including the general propositions cited in each of them, mandates or justifies

the Court of Chancery's conclusion that the motion to amend deprived it of jurisdiction. Indeed, as Magistrate Mitchell points out in her footnote, FloSports effectively played fast and loose with the motion to amend and its assertion of a jurisdictional defense when its own conduct compelled amendment of the Complaint. Final Report at 12 (Dkt. 59) (A1022).

III. FLOSPORTS HAS NOT ESTABLISHED ANY LEGITIMATE BASIS TO DENY THE FLOREANIS CONTINUING ACCESS TO ITS BOOKS AND RECORDS.

In the third point of its Answering Brief, FloSports offers up a series of strawmen to avoid any further production of the books and records and other pertinent information to the Floreanis. Ans. Br. at 34-44. FloSports raises everything from the existence of the Common Interest Agreement to which FloSports is not a party; to doubts about the Floreanis' true purpose in their request; to imagined third-party financing transactions; and to purported, unsubstantiated breaches of a prior confidentiality agreement. *Id.* From these arguments, it is apparent that FloSports intends to deprive the Floreanis of the opportunity to value properly and sell their shares in what remains a private company. Should this Court deny them relief, the Floreanis will have little recourse or ability to value their shares and certainly any ability to sell them. More egregiously, it will allow FloSports to create additional stumbling blocks for the Floreanis and to hold the Floreanis and their shares hostage for as long as FloSports desires.

As noted in the Floreanis' Opening Brief, this Court recognized the risks posed in this scenario in *CM & M Grp. v. Carroll*, 453 A.2d 788, 794 (Del. 1982), in which this Court, in the second of two decisions involving the parties, found that, when the purpose of the shareholder was to value and sell his shares, the denial of periodic updated reporting constituted an abuse of discretion. Moreover, the Court

found that Section 220 empowers the court to ensure that the information required by the shareholder remains current and subject to periodic updates. *See id.*

The first of these strawmen is the Common Interest Agreement. FloSports suggests that it strips the Plaintiffs of standing to sue. Ans. Br. at 36-37. It does no such thing. Moreover, as stated throughout this proceeding, FloSports is neither a party to, nor a beneficiary of, this agreement (which also expired by its terms before this appeal was filed) (A0025-A0026); (A1027) and FloSports fails to offer any legal basis in the Answering Brief for it to challenge or enforce it. (*See* Ans. Br. at 36-37.) Indeed, FloSports could not explain to Magistrate Mitchell what its import was, compelling her to conclude, "I don't see how that agreement, which is not alleged to include the Company, has any implications for this litigation." *See* (A1027).

The second of these strawmen is the "true purpose" of the inspection. *See* Ans. Br. at 37-39. Having failed to provide any financial information to the Floreanis for years and having failed to hold a stockholders meeting after removing Martin Floreani from management years earlier, FloSports claims that harassment and not valuation was the Floreanis' true motive. Against this backdrop, the Magistrate, who heard the testimony from Mr. Floreani and FloSports' allegations, found that FloSports failed to demonstrate that the true purpose of the demand, to inspect the books, was somehow pretextual. (A1028-A1031). Her Honor did not miss the fact that there was animosity between the parties when she concluded:

> Here I find that FloSports has not met its burden to prove that the Plaintiffs' purpose is to gain a competitive edge or cause reputational harm, rather than the stated purpose of valuing their shares. It is clear that there is personal animosity between the parties, however the record does not show that demands were sent because of this personal animosity, but rather reflects the books and records demands were sent to the Company for the stated purpose of valuing their shares.

(A-1029.) This finding squares with the testimony and the nature of the information requested as well. Again, Martin Floreani expressly testified that "a lot of [his] value is tied into FloSports" and that he wanted to value his shares so that he can monetize them and end his relationship with the Company. Tr. (Dkt. 58) 12:5–8; 16:17–23; 21:22–22:1 (A0748; A0752; A0757-A0758). Martin Floreani explained at trial that his new company, Rokfin, does not compete with FloSports and used a colorful comparison at trial to make his point. Tr. (Dkt. 58) 79:14–80:06 (A0815–A0816). Specifically, he analogized the distinction to the difference between buying beef in a supermarket to cook your own burger (Rokfin) versus buying a burger fully prepared from McDonalds (FloSports). (A0816.)

Ultimately, as noted in the Opening Brief, FloSports fears that a sale of the Floreanis' shares will allow Martin Floreani to compete with the Company. (See A1030.) Yet Martin Floreani testified: "every day 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) 41:13–19 (A0777).

Furthermore, to the extent that Martin Floreani's goal or true purpose was to harass FloSports as the Company suggests, then the documents and information demanded would have appeared much different. In that case, the Floreanis would have requested board materials, emails and other communications and made allegations in the three demands about perceived foul play. They did not. *See* Final Report (Dkt. 59) at 21-27 (A1031-A1036). Each and every request represents a demand for financial information and related materials. *Id.* Admittedly, the Floreanis have received a substantial portion of that, but the Answering Brief makes clear that if FloSports has its way, the Floreanis will receive no more and as noted earlier, this Court has established that when the purpose of the demand is to value and sell the shares, updated information is critical. *See CM & M Grp., Inc.*, 453 A.2d at 794.

As to the documents that the Floreanis have requested, FloSports recognizes the importance of the financial data requested in its citation to *Rivest v. Hauppauge Digit., Inc.*, 2022 WL 3973101 at *20 (Del. Ch. Sept. 1, 2022); and *Thomas & Betts Corp. v. Leviton Mfg. Co., Inc.*, 685 A.2d 702, 714 (Del. Ch. 1995). FloSports then veers off to discuss materials that the Floreanis have not requested. Ans. Br. at 40-41 Moreover, FloSports then suggests that Mr. Roy's testimony lacks value even though a valuation of the shares would include what the market would pay for those shares. FloSports does not identify a single category of documents from the Third

Demand (or the prior demands) or from Mr. Roy's testimony that is inconsistent with the case law cited. *Id.* at 43; JX-28 (A0202-A0227). Each of the categories listed can be found in the majority of the cases cited by either the Floreanis or FloSports.[4]

Finally, FloSports suggests, without basis, that there is a need for a draconian form of confidentiality agreement like that in *Metro Storage Int'l LLC v. Harron*, 275 A.3d 810 (Del. Ch. 2022) which was ordered in the context of litigation involving a multitude of equitable tort, breach of duty and other claims against the defendant Harron in an employment context. Ans. Br. at 44. That is far afield from the nature of the relationships or the accusations (whether baseless or not) here. FloSports hurled allegations that it has not proven regarding confidentiality and never alleged damages. *See id.* In fact, FloSports even built a positive relationship with Second Alpha, the party it alleged received information improperly through the Floreanis and never claimed injury of any kind. Taking a more measured approach, Magistrate Mitchell recommended the form of agreement based upon that in *Schoon v. Troy Corp.*, 2006 WL 1851481 at *5-6 (Del. Ch. Jun. 27, 2006) as the appropriate approach to which the Floreanis expressed no disagreement. *See* Final Report (Dkt. 59) at 28-31 (A1038-A1041).

[4] In fact, FloSports notes that it did not provide the tax returns as the cases it cites permit. Ans. Br. at 41.

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: February 28, 2025
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CERTIFICATE OF SERVICE

I, Scott J. Leonhardt, hereby certify that on February 28, 2025, a true and correct copy of the Appellants' Reply Brief was served upon Defendant's counsel in the manner indicated below:

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