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IN THE SUPREME COURT OF THE STATE OF DELAWARE

PJT HOLDINGS, LLC, Plaintiff Below, Appellant, v. DANIEL COSTANZO, BENJAMIN COSTANZO, and BRIAN FITZPATRICK, Defendants Below, Appellees.	:	No. 366, 2025 On appeal from the Court of Chancery of the State of Delaware, C.A. No. 2023-0665-JTL

APPELLANT'S OPENING BRIEF

Dated: October 23, 2025

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NATURE OF PROCEEDINGS

The primary issue presented by this appeal is whether Appellant PJT Holdings, LLC ("PJT") remains a member of PBM Group Holdings, LLC ("Company"), a Delaware limited liability company. The Honorable J. Travis Laster of the Court of Chancery ("Trial Court") erred in failing to enforce the unambiguous language of the Company's operating agreement ("Operating Agreement"), wrongfully upholding PJT's expulsion from the Company ("Expulsion") and improperly denying PJT's right to compensation for its membership interest.

For background, the Company's members ("Member(s)") initially included Appellees Daniel Costanzo, Benjamin Costanzo, and Brian Fitzpatrick—the founders and operators of a plant-based restaurant (collectively, "Founders")—and PJT. In June 2023, Founders approved a resolution they claim is a written consent ("Resolution"), which implemented the Expulsion.

PJT challenged the Expulsion by bringing the case below under Sections 18-110 and 18-111 of Delaware's Limited Liability Act ("LLC Act").[1] PJT alleged that Founders failed to adhere to the Operating Agreement's controlling, unambiguous language when purporting to expel PJT ("Expulsion Claim"). Alternatively, assuming *arguendo* that the Expulsion was valid, PJT alleged that Founders had breached the Operating Agreement by not paying PJT fair value for its membership

[1] 6 *Del. C.* § 18-101 – § 18-1208.

interest ("Fair Value Claim"). And because the Operating Agreement requires Members that breach the Operating Agreement to indemnify other Members, PJT sought indemnification ("Indemnification Claim").

PJT moved for summary judgment, asserting that the Expulsion was an invalid Member act under the Operating Agreement's controlling language and, among other things, also seeking disposition of its Indemnification Claim. The Trial Court denied that motion in a ruling that failed to enforce the Operating Agreement's unambiguous terms ("Summary Judgment Ruling" or "SJR").[2]

After staying the Fair Value Claim, the Trial Court presided over a two-day trial on PJT's Expulsion Claim, PJT's Indemnification Claim (as it related to the breach underlying the Expulsion Claim), and Founders' counterclaims for indemnification and forfeiture of PJT's membership interest.

In a Post-Trial Opinion ("Opinion"),[3] the Trial Court upheld the Expulsion, determining that it satisfied expulsion standards in the Operating Agreement ("Expulsion Ruling"). The Trial Court also ordered PJT to indemnify Founders.

[2] The SJR is Exhibit A, and its implementing order is Exhibit B.
[3] The Opinion is Exhibit C.

The Trial Court then entered a Final Order and Judgment ("Final Order")[4] and held that PJT had forfeited its membership interest in the Company ("Forfeiture Ruling"). The Final Order entered judgment for Founders "on all issues."[5]

This appeal followed.

[4] The Final Order is Exhibit D.

[5] Final Order, ¶ 1.

SUMMARY OF ARGUMENTS

1. Under the Operating Agreement's unambiguous language, Members can act in two ways: (a) voting at a properly noticed meeting at which a quorum is present; or (b) written consent approved by all Members. Neither occurred in connection with the Expulsion. Rather, without convening a meeting, Founders claim to have expelled PJT by a purported written consent that only they approved. Thus, this Court should reverse the Trial Court's Summary Judgment Ruling that the Expulsion was a valid Member act because it contradicted the controlling and unambiguous language of the Operating Agreement.

2. Independently, the Court should reverse or remand the Summary Judgment Ruling because it is based on an analysis the Trial Court crafted *sua sponte* that was not presented by any party.

3. If the Summary Judgment Ruling is affirmed, the Court should nonetheless reverse the Expulsion Ruling because the Trial Court erred in finding that the record contains sufficient support to satisfy expulsion standards in the Operating Agreement.

4. If the Court affirms the Summary Judgment Ruling and the Expulsion Ruling, it should reverse the Trial Court's Forfeiture Ruling because the Trial Court ignored the Founders' noncompliance with an unambiguous notice requirement in the Operating Agreement.

5. Because Founders breached the Operating Agreement with the Expulsion, PJT is entitled to indemnification under the Operating Agreement, and Founders are not.

STATEMENT OF FACTS

This appeal involves the Trial Court's: (1) Summary Judgment Ruling; and (2) post-trial rulings. By and large, if the Court reverses the former it need not address the latter. Thus, PJT has divided this section into facts that are primarily relevant to the Summary Judgment Ruling (*see* Section I below) and additional facts pertaining to the post-trial rulings (*see* Section II below).

I. FACTS PRIMARILY RELEVANT TO THE TRIAL COURT'S SUMMARY JUDGMENT RULING.

A. PJT AND FOUNDERS FORM THE COMPANY AND AGREE TO THE OPERATING AGREEMENT.

Appellant PJT is controlled by Peter Trematerra,[6] who is a "real estate developer," "builder," and philanthropist.[7]

Appellees Daniel Costanzo, his brother Benjamin Costanzo, and their friend Brian Fitzpatrick founded and operate a "'mafia-themed' Italian restaurant" in Florida called "Plant Based Mafia," which "only uses plant-based ingredients."[8]

In 2021, Mr. Trematerra and Founders partnered to expand the "Plant Based Mafia" concept by opening additional restaurants.[9] Mr. Trematerra agreed to finance

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[6] A679.
[7] A1038-40.
[8] A680; A708-10; A712-13.
[9] A680.

the endeavor.[10] Founders were to contribute "sweat equity"[11] and intellectual property.[12]

Mr. Trematerra and Founders formed the Company to pursue their joint venture.[13] The Operating Agreement governs the Company and is subject to Delaware law.[14]

The Company is a member-managed LLC[15] that started with four Members.[16] PJT held a 50% equity stake,[17] and Founders collectively owned the remaining 50%.[18] Under the Operating Agreement, PJT had "the deciding vote to break [a] deadlock."[19]

Article VIII of the Operating Agreement provides two ways that Members may take action. First, under Paragraph 8.01, the baseline rule is that Members act by voting at a properly noticed meeting at which a quorum is present:

> (a) With respect to any matter, other than a matter for which the affirmative vote of the holders of a specified portion of the Percentage Interests of all Members entitled to vote is required by the Act or this Agreement, the affirmative vote of a Simple Majority at a meeting of

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[10] A1043-44; A1049.
[11] A600; A1043-44.
[12] A719; A1494-96.
[13] A680.
[14] A680; A1490.
[15] A1468.
[16] A1455; A1493.
[17] A681; A1493.
[18] A681; A1493.
[19] A1471-72.

> Members at which quorum is present shall be the act of the Members or by another specific provision in this Agreement . . . .
>
> (g) Written or printed notice stating the place, day and hour of the meeting and, in the case of a special meeting, the purpose or purposes for which the meeting is called, shall be delivered not less than ten (10) nor more than sixty (60) days before the date of the meeting, either personally or by mail, by or at the direction of the person calling the meeting, to each Member entitled to vote at such meeting. . . .[20]

A quorum requires a "Simple Majority."[21] That term "means one (1) or more Members having among them more than fifty percent (50%) of the Percentage Interests of all Members."[22]

Second, as an alternative to Paragraph 8.01, Paragraph 8.05(a) provides that Members can act by written consent without notice or a meeting, but only if <u>all Members</u>—Founders and PJT—agree:

> Any action required or permitted to be taken at any annual or special meeting of Members may be taken without a meeting, without prior notice, and without a vote, by <u>unanimous written consent of the Members</u> or committee members, as the case may be, setting forth the action so taken.[23]

The Operating Agreement contains other relevant provisions. Paragraph 15.04 governs expulsion and provides that "[a] Member may be expelled from the Company by unanimous vote of all other Members (not including the Member to be

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[20] A1471-72.
[21] A1471.
[22] A1460.
[23] A1474 (emphasis added).

expelled) if" the to-be-expelled Member engages in conduct that satisfies specified standards.[24] Paragraph 18.11 requires Members that breach the Operating Agreement to indemnify other Members.[25]

B. PJT Sues After Founders Approve the Expulsion Without a Meeting or PJT's Consent, and the Trial Court Issues the Summary Judgment Ruling.

In June 2023, Founders approved the Resolution, claiming to expel PJT from the Company.[26] Founders did not give PJT notice about, or convene a meeting to approve, the Expulsion.[27] Rather, Founders claim the Resolution constitutes a written consent.[28] The Resolution was not approved by all Members; it only bears Founders' signatures.[29]

PJT challenged the Expulsion by suing and promptly moving for summary judgment,[30] contending that the Expulsion was invalid because, contrary to the unambiguous requirements under Article VIII of the Operating Agreement regarding Member action, Founders purported to expel PJT by non-unanimous written consent rather than convening a duly noticed meeting.[31]

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[24] A1485-86.
[25] A1490.
[26] A682.
[27] SJR at 15. *See also* A162, A682.
[28] SJR at 15.
[29] A2757.
[30] A30-31.
[31] A100-16; A212-56; SJR at 5-11, 20-26, 30-33.

The Trial Court denied PJT's motion and held that the Operating Agreement allowed Founders to expel PJT by written consent in lieu of holding a meeting.[32] Even though Paragraph 8.05(a) of the Operating Agreement says that action by written consent requires the "unanimous written consent of the Members . . . ,"[33] the Trial Court determined that expulsion by written consent only "requires unanimity of" *some* Members – those "entitled to vote" at an expulsion meeting ("First SJR Determination").[34] The Trial Court then determined that the Members "entitled to vote" at an expulsion meeting include "everybody other than the [Member] being expelled . . . ." ("Second SJR Determination").[35]

Based on the Second SJR Determination, only Founders would be "entitled to vote" at a meeting held for the purpose of expelling PJT. Thus, under the Summary Judgment Ruling, the Expulsion was procedurally valid because Founders approved it by written consent and, according to the Trial Court, PJT's approval was unnecessary.

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[32] SJR at 35-52.
[33] A1474 (emphasis added).
[34] SJR at 51, 52.
[35] *Id.*

II. ADDITIONAL FACTS RELEVANT TO THE TRIAL COURT'S POST-TRIAL RULINGS.

A. OPERATING AGREEMENT PROVISIONS RELATING TO CAPITAL CONTRIBUTIONS, "DEFAULTING MEMBERS," AND EXPULSION STANDARDS.

PJT agreed to invest up to $3.5 million.[36] The Operating Agreement defines that amount as the "PJT Holdings Committed Capital" and divides it into two parts: (1) a $200,000 commitment; and (2) an additional contribution potentially amounting to $3.3 million ("Additional Capital Contribution").[37] Under Paragraph 4.02 of the Operating Agreement, PJT may pay the "PJT Holdings Committed Capital"—including the Additional Capital Contribution—at any time with no deadline:

> Except for the PJT Holdings Committed Capital to be made at such amounts and at the discretions [sic] of PJT Holdings, no Member shall be required to make any Capital Contributions other than those specifically described by this Agreement, unless agreed to in writing by the contributing Member or required by Delaware Law.[38]

Under Paragraph 15.01, a Member that fails to pay "all or any portion of a Capital Contribution" is a "Defaulting Member."[39] Paragraph 15.01 provides that "the Company may exercise, on notice to" the "Defaulting Member,"[40] various

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[36] *See* A1455.
[37] *Id. See also* Opinion at 5.
[38] A1463 (emphasis added). *See also* A889-90.
[39] A1483.
[40] *Id.*

remedies, including "forfeiture of the Defaulting Member's Membership Interest . . . ."[41]

An expelled Member under Paragraph 15.04 is also considered a "Defaulting Member."[42] Expulsion requires a Member to have engaged in conduct that satisfies specified standards, like a "willful violation" of the Operating Agreement under Paragraph 15.04(a) ("Willful Violation"), or "gross negligence" under Paragraph 15.04(b) ("Gross Negligence"):

> A Member may be expelled from the Company by unanimous vote of all other Members (not including the Member to be expelled) if that Member (a) has willfully violated any provision of this Agreement; (b) committed fraud, theft, or gross negligence against the Company or one or more Members of the Company, (c) engaged in wrongful conduct that adversely and materially affects the business or operation of the Company or (d) met any other condition that allows a Member to be expelled under the Act. Such a Member shall be considered a Defaulting Member, and the Company or other Members may also exercise any one or more of the remedies provided for in Paragraph 15.01. . . . [43]

B. MR. TREMATERRA CANCELS A COMPANY LEASE AFTER FOUNDERS LEAVE HIM IN THE LURCH.

Mr. Trematerra contributed almost $200,000 to the Company,[44] and the potential aggregate contribution of $3.5 million was premised on a plan to start

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[41] A1485 (emphasis added).
[42] *Id.*
[43] *Id.*
[44] *See* A1407-11.

opening restaurants in Florida.[45] But the Florida real estate market "was very tight,"[46] and Founders and Mr. Trematerra chose a location in Beverly Hills, California for the Company's first restaurant ("Beverly Hills Restaurant").[47]

The Company negotiated a lease for the Beverly Hills Restaurant ("Lease").[48] Founders gave Mr. Trematerra general authority to handle real estate matters for the Company.[49] And at trial, Mr. D. Costanzo agreed that "PJT had authority and the consent of the other members to negotiate a lease in L.A."[50]

Launching in California meant higher startup costs.[51] Thus, Mr. Trematerra would have been required to contribute more capital than originally agreed to in exchange for PJT's 50% interest in the Company.[52] To account for the increased cost and risk, Mr. Trematerra proposed restructuring the Company's ownership to increase PJT's interest in the Company to 70% ("Restructuring").[53]

By early March 2023—about two months after Lease negotiations began and the initial Restructuring proposal—neither the Restructuring nor the Lease had been finalized, and both sides were frustrated. For example, Mr. D. Costanzo "was

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[45] A744; A901; A1065.
[46] A484-85; A1155-56.
[47] A401-02; A747.
[48] A1861-84.
[49] *See, e.g.*, A1906.
[50] A991.
[51] A753; A1065.
[52] A1066-67.
[53] A411; A455; A1066-67; A1070-72.

abusive" and "cursed" during a Zoom call,[54] which led Mr. Trematerra to request a buy-out.[55] Mr. B. Costanzo and a Company advisor persuaded Mr. Trematerra to stay by promising that he "would not have to deal with" Mr. D. Costanzo.[56]

Yet only days later, Founders were secretly exploring expelling PJT from the Company while simultaneously urging Mr. Trematerra to sign the Lease, which would require him to provide a personal guaranty ("Personal Guaranty").[57] Those events played out on March 8, 2023:

- 8:58 a.m. Without Mr. Trematerra's knowledge, Mr. D. Costanzo texted Founders' adviser saying, "[w]e are thinking about regrouping, calling on our default clause, kicking him [Mr. Trematerra] out of the LLC . . . ."[58]
- 9:21 a.m. In a separate text thread, Mr. Trematerra told Mr. D. Costanzo about rent concessions he wanted to negotiate before signing the Lease and asked for assurances about the Restructuring: "[W]e are trying to negotiate one last point on the lease. I don't want to waste potentially $50,000 worth of rent before the restaurant is completed. I need you Ben and Brian to send me the

[54] A1088.
[55] A1832.
[56] A1089-90.
[57] A1885-86.
[58] A2317 (emphasis added).

[acknowledgement] that the percentages have been changed to 70 :: 30 % etc."[59]

- 9:25 a.m. Mr. D. Costanzo invited Mr. Trematerra to have his lawyer take steps to implement the Restructuring: "As far as the percentage we need a simple amendment to the current operating agreement. You can have [your lawyer] send that this morning."[60]
- After 10:48 a.m. Based on Mr. D. Costanzo's 9:25 a.m. text,[61] which Mr. Trematerra understood as saying, "we have an agreement" on the Restructuring,[62] Mr. Trematerra signed the Lease and the Personal Guaranty.[63]

Several days later, Mr. Trematerra provided a document to implement the Restructuring.[64] However, contrary to his March 8 text that had induced Mr. Trematerra to sign the Lease,[65] Mr. D. Costanzo sent an email rejecting the Restructuring: "After careful consideration and lengthy conversations with our

[59] A1926 (emphasis added).
[60] *Id. See also* A931.
[61] A1107.
[62] A1098.
[63] A1861-86.
[64] A1887-94.
[65] A1107.

business advisor . . . we are not comfortable re-trading the 50/50 deal we agreed to."[66]

In that same email, Mr. D. Costanzo also announced that Founders would not open the Beverly Hills Restaurant:

> We do not think it makes sense at this time to go to California despite knowing how successful we will be out there. You've expressed to us several times that you're not comfortable with California and that you had always believed we'd launch in Florida. So with that said, we strongly feel Florida is where we should launch.[67]

Founders' about-face put Mr. Trematerra in a bind. The Company had a Lease for which Mr. Trematerra was personally liable,[68] but Mr. Trematerra could not operate the Beverly Hills Restaurant without Founders.[69] Thus, Mr. Trematerra cancelled the Lease ("Lease Cancellation").[70] At trial he explained, "I guess my thought process was that if I was - - my partners were not going to go to California with me, I had the right to try to mitigate and - - cancel the lease and mitigate the damages as best as possible, try to negotiate a settlement."[71]

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[66] A2753.
[67] A2754 (emphasis added).
[68] A682.
[69] A1113.
[70] *Id.*; A2753.
[71] A1254-55.

C. FOUNDERS EXPEL PJT EVEN THOUGH MR. TREMATERRA REMAINS WILLING TO PARTICIPATE IN THE COMPANY.

After the Lease unraveled, Mr. Trematerra repeated his request for a buy-out.[72] But he remained willing to continue with the Company and pay the Additional Capital Contribution.[73] For example, after cancelling the Lease in March 2023, Mr. Trematerra paid Company expenses during Q2 2023.[74] And pivoting from California, Mr. Trematerra was open to paying for a restaurant in Florida, telling Mr. D. Costanzo, "I am looking at each location on a per basis location in Florida. . . . You come up with a location it might be good it might not. I have to vet it and I will when I get back into town . . . ."[75]

Founders nonetheless approved the Resolution in June 2023, claiming to expel PJT.[76] The Resolution lists nine reasons for the Expulsion,[77] but only two are relevant: the first and sixth (respectively, "Reason One" and "Reason Six"). As justifications for the Expulsion, Reason One alleges that PJT failed to pay the Additional Capital Contribution,[78] and Reason Six cites the Lease Cancellation.[79]

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[72] A2360-65.
[73] A1122-23; A1138; A2753.
[74] A1407-11.
[75] A2366.
[76] A2755-57.
[77] A2755-56. *See also* A569; A649-50; A1289.
[78] A2755.
[79] A2756.

D. THE TRIAL COURT'S POST-TRIAL RULINGS.

After a two-day trial, the Trial Court issued the Expulsion Ruling, finding that: (1) Reason One satisfied the expulsion standards in Paragraph 15.04(a) and (b) of the Operating Agreement;[80] and (2) Reason Six satisfied Paragraph 15.04(b).[81]

Because it found that the Expulsion was warranted, the Trial Court also ordered PJT to indemnify Founders under Paragraph 18.11 of the Operating Agreement.[82]

The Trial Court further held that PJT was a "Defaulting Member" under the Operating Agreement with no basis for seeking a fair value determination of its Company interest,[83] even though Founders never notified PJT that they intended to seek forfeiture, as Paragraph 15.01 requires.[84]

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[80] Opinion at 40-44.
[81] *Id.* at 45-48.
[82] *Id.* at 58-59; Final Order, ¶ 3.
[83] Final Order, ¶ 2.
[84] A1483.

ARGUMENT

I. THIS CASE SHOULD NEVER HAVE PROCEEDED PAST SUMMARY JUDGMENT BECAUSE THE TRIAL COURT ERRED IN HOLDING THAT THE EXPULSION WAS PROCEDURALLY VALID.

A. QUESTIONS PRESENTED

Whether the Trial Court erred in: (1) ruling that the Operating Agreement permitted Founders to expel PJT from the Company by written consent approved by three of the Company's four Members despite language unambiguously providing that Members can act only by voting at a meeting or by written consent approved by all Members; and (2) failing to grant summary judgment for PJT on the Indemnification Claim.

These issues were preserved at A41-54, A100-16, A212-56, and SJR at 5-11, 20-26, 30-33.

B. STANDARD OF REVIEW

The Court "review[s] questions of law and contractual interpretation, including the interpretation of LLC agreements, de novo." *Holifield v. XRI Inv. Holdings LLC*, 304 A.3d 896, 921 (Del. 2023).

The Court also reviews "summary judgment ruling[s] de novo" so it can "determine whether viewing the facts in the light most favorable to the nonmoving party, the moving party has demonstrated that there are no material issues of fact in dispute and that the moving party is entitled to judgment as a matter of law." *Croda*

Inc. v. New Castle Cnty., 282 A.3d 543, 547 (Del. 2022); *State Farm Mut. Auto. Ins. Co. v. Patterson*, 7 A.3d 454, 456 (Del. 2010) (cleaned up).

C. MERITS OF ARGUMENT

Freedom of contract is preeminent in Delaware. *See Cantor Fitzgerald, L.P. v. Ainslie*, 312 A.3d 674, 676-77 (Del. 2024). LLC "disputes amplify these contractarian principles." *Mehra v. Teller*, 2024 WL 4249822, at *6 (Del. Ch. Sept. 20, 2024).

The General Assembly enacted the LLC Act "to give the maximum effect to the principle of freedom of contract and to the enforceability of limited liability company agreements." 6 *Del. C.* § 18-1101(b). Thus, "the approach of the" LLC Act "is 'to provide members with broad discretion in drafting the limited liability company agreement and to furnish default provisions when the members' agreement is silent.'" *Holifield*, 304 A.3d at 922 (quoting *Elf Atochem N. Am., Inc. v. Jaffari*, 727 A.2d 286 (Del. 1999)). "[A]ny conflict between [discretionary] provisions of the [LLC] Act and an LLC agreement will be resolved in favor of the LLC agreement." *Achaian, Inc. v. Leemon Fam. LLC*, 25 A.3d 800, 803 (Del. Ch. 2011).

These "well-established principles" dictate how to resolve "dispute[s] over the internal affairs of an LLC . . . ." *Holifield*, 304 A.3d at 922. First, a court must "examine the LLC agreement to determine whether it addresses the issue" at hand. *Id.* (cleaned up). "If the agreement covers the issue, the agreement controls unless it

violates one of the [LLC Act]'s mandatory provisions." *Id.* Second, "[i]f the agreement is silent, then the Court must look to the [LLC Act] to see if one of its default provisions apply." *Id.* Third, "[i]f neither the agreement nor the [LLC Act] addresses the matter, the rules of law and equity shall govern." *Id.*

Interpreting an LLC agreement depends on "the same principles that are used when construing and interpreting other contracts." *Id.* at 923-24. "Delaware courts read the agreement as a whole and enforce the plain meaning of clear and unambiguous language." *Id.* at 924. "If a writing is plain and clear on its face, i.e., its language conveys an unmistakable meaning, the writing itself is the sole source for gaining an understanding of intent." *City Investing Co. Liquidating Tr. v. Cont'l Cas. Co.*, 624 A.2d 1191, 1198 (Del. 1993).

The Summary Judgment Ruling implicates these principles and intersecting provisions in the Operating Agreement. The Trial Court misread those provisions and how they fit within the Operating Agreement as a whole, impermissibly departing from the Operating Agreement's unambiguous language and substituting its own view of fairness for the parties' bargained-for outcome. But the contractual language the parties agreed to prevails, makes sense, and establishes that Founders failed to conduct a proper expulsion process under the Operating Agreement, invalidating the Expulsion.

1. Expulsion Under the Operating Agreement Requires a Meeting.

"Given the sanctity of the franchise, Delaware law requires that provisions" in LLC agreements "affecting voting rights and governance are to be construed strictly and any provision that purports to restrict the franchise must do so clearly." *Zohar III Ltd. v. Stila Styles, LLC*, 2022 WL 1744003, at *14 (Del. Ch. May 31, 2022), *aff'd Tilton v. Zohar III Ltd.*, 285 A.3d 1204 (Table) (Del. 2022). Strictly construing the governance provisions at issue here—Paragraphs 8.01(a), 8.05(a), and 15.04 of Operating Agreement—shows that the Expulsion was an invalid Member act.

The Operating Agreement's structure is important and telling. Article VIII addresses how Member actions are to be accomplished and allows Members to act in two ways. Under Paragraph 8.01, Members generally act by voting at a properly noticed meeting at which a quorum is present.[85] The only other option for Member action is provided by Paragraph 8.05(a), which allows Members to act "without a meeting, without prior notice, and without a vote, by unanimous written consent of the Members . . . ."[86]

[85] A1471-72.

[86] A1474 (emphasis added).

Article XV pertains to defaulting actions by a Member and does not address how Members act.[87] Paragraph 15.04 governs expulsion and says that "[a] Member may be expelled from the Company by unanimous vote of all other Members (not including the Member to be expelled)" if certain standards are met.[88]

Paragraph 15.04 does not expressly state "how" Members are to act in effectuating an expulsion (*e.g.*, by meeting, written consent, or other means). But Paragraph 15.04 must be read with Article VIII. *See Elliott Assocs. v. Avatex Corp.*, 715 A.2d 843, 854 (Del. 1998). Such a reading establishes that expulsion requires a properly noticed meeting at which a quorum is present and cannot occur via written consent.

While Paragraph 15.04 does not expressly require expelling Members to convene a meeting or say anything about action by written consent, it does use the word "vote." That the Operating Agreement distinguishes between Member action by "vote," on one hand, and "consent," on the other hand,[89] "suggests that [those terms] have different meanings." *In re Shorenstein Hays-Nederlander Theatres LLC Appeals*, 213 A.3d 39, 57 (Del. 2019).

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[87] A1483-86.

[88] A1485.

[89] *See, e.g.*, A1489 (Paragraph 17.02(b) providing that certain "amendment[s] or modification[s]" can be made via "consent or vote").

In the Operating Agreement, "vote" refers to action taken at a meeting, while "*consent*" refers to action taken *without a meeting*. For example, Paragraph 8.05(a) ties meetings with votes and says neither is needed if there is a valid consent: "[A]ction . . . may be taken without a meeting, without prior notice, and without a vote, by *unanimous written consent* of the Members . . . ."[90]

Otherwise, the dictionary[91] defines "vote" as "[t]he expression of one's preference or opinion in a meeting or election by ballot, show of hands, or other type of communication." *Vote*, Black's Law Dictionary (12th ed. 2024) (emphasis added). Paragraph 15.04 has nothing to do with elections. Thus, "vote" in that context refers to expressing a preference or opinion in a meeting. That result conforms with Delaware entity law, under which "votes" happen at meetings. *Cf. Palisades Growth Cap. II, L.P. v. Backer*, 2020 WL 1503218, at *7 (Del. Ch. Mar. 26, 2020) ("The DGCL is clear that stockholders vote at meetings.").

In sum, because Paragraph 15.04 states that Members may be expelled by a "vote,"[92] expulsion requires a meeting that complies with Paragraph 8.01. Thus, since Founders approved the Expulsion by non-unanimous written consent, without

[90] A1474 (emphasis added).

[91] *See Lorillard Tobacco Co. v. Am. Legacy Found.*, 903 A.2d 728, 738 (Del. 2006) ("Delaware courts look to dictionaries for assistance in determining the plain meaning of terms which are not defined in a contract.").

[92] A1485.

a meeting,[93] the Expulsion was invalid. *See, e.g.*, *Ensing v. Ensing*, 2017 WL 880884, at *10 (Del. Ch. Mar. 6, 2017) (holding that LLC manager's purported removal was invalid because defendant failed to comply with procedural requirement in the LLC agreement).

2. The Trial Court Erred by Ruling That Founders Expelled PJT from the Company by Written Consent.

The Trial Court held that expulsion under Paragraph 15.04 could be accomplished by written consent.[94] For the reasons discussed above, that holding contradicts the Operating Agreement's unambiguous language, and this Court should reverse the Summary Judgment Ruling.

Reversal is required even if expulsion by written consent were permitted. As discussed, the Summary Judgment Ruling is premised on both the First SJR Determination and the Second SJR Determination.[95] Thus, for the Summary Judgment Ruling to stand, the Court must affirm *both* determinations. On the other hand, if *either* determination fails, the Summary Judgment Ruling must be reversed.

As discussed below, the Trial Court erred in making both the First SJR Determination and the Second SJR Determination.

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[93] SJR at 15.
[94] *Id.* at 35-52.
[95] *Supra* Statement of Facts, § I.B.

a. *The Trial Court Erred in Making the First SJR Determination.*

The First SJR Determination—the Trial Court's determination that expulsion by written consent only "requires unanimity of" Members who are "entitled to vote" at an expulsion meeting[96]—is based on the Trial Court's assessment that the Operating Agreement is unclear as to whether expulsion by written consent requires "unanimous written consent" from all Members (Founders and PJT) or just the "people who would be entitled to vote at [a] meeting . . . ."[97] Assuming *arguendo* that the Trial Court was correct and the Operating Agreement is ambiguous on this point, the Trial Court erred by resolving that ambiguity on summary judgment. *See GMG Cap. Invs., LLC v. Athenian Venture Partners I, L.P.*, 36 A.3d 776, 784 (Del. 2012).

But there is no ambiguity. If expulsion by written consent were permitted, Paragraph 15.04 must be read with Paragraph 8.05(a), *Elliott*, 715 A.2d at 854, which states that action by written consent requires "unanimous written consent <u>of the Members</u> . . . ."[98] Thus, the First SJR Determination improperly contradicts Paragraph 8.05(a)'s unambiguous language (*i.e.*, "unanimous consent of the Members"), *see Osborn ex rel. Osborn v. Kemp*, 991 A.2d 1153, 1159 (Del. 2010),

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[96] SJR at 51, 52.
[97] *Id.* at 48-49.
[98] A1474 (emphasis added).

and the Trial Court erred by basing its ruling on language the parties did not bargain for (*i.e.*, "unanimity of the people who would be able to vote if you took the action at the meeting").[99] *See Glaxo Grp. Ltd. v. DRIT LP*, 248 A.3d 911, 919 n.31 (Del. 2021).

Only Founders approved the "written consent" that effectuated the Expulsion.[100] Thus, the Expulsion was invalid because, not only did Founders fail to convene a meeting at which the "vote" Paragraph 15.04 requires could occur, but it was approved by less than all of the Company's Members, in derogation of Paragraph 8.05(a).

The Trial Court also erred by applying 6 *Del. C.* § 18-302(d),[101] which provides the LLC Act's default rule for Member action by written consent. It states that "unless" an LLC agreement "otherwise provide[s]," members can act by written consent if those with the votes needed to act at a meeting attended by everyone "entitled to vote" sign off:

> Unless otherwise provided in a limited liability company agreement, on any matter that is to be voted on, consented to or approved by members, the members may take such action without a meeting, without prior notice and without a vote if consented to or approved, in writing, by electronic transmission or by any other means permitted by law, by members having not less than the minimum number of votes that would

[99] SJR at 51.
[100] A2757.
[101] SJR at 44-45, 49-51.

be necessary to authorize or take such action at a meeting at which all members entitled to vote thereon were present and voted.[102]

The Trial Court applied Section 18-302(d) because it found that the Operating Agreement does not "contain any language to override the default standard of 'entitled to vote.'"[103] But again, Paragraph 8.05(a) unambiguously states that action by written consent is permitted if approved "by unanimous written consent of the Members . . . ."[104] Thus, the Operating Agreement provides a standard that conflicts with and displaces the default rule. *See Achaian*, 25 A.3d at 803.

Still, the Trial Court applied Section 18-302(d) because it found that the Operating Agreement was insufficient to override the default rule.[105] In the Trial Court's assessment, to displace a default provision in the LLC Act, an LLC agreement must "explicitly override . . . the default requirement,"[106] as opposed to providing a standard that simply conflicts with the default rule. That ruling has at least three faults.

First, the Trial Court's analysis turns Delaware alternative entity law on its head. Rather than looking to the Operating Agreement first and using the LLC Act to fill gaps, as this Court requires, *see Holifield*, 304 A.3d at 922, the Trial Court

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[102] Emphasis added.
[103] *Id.* at 49-50.
[104] A1474 (emphasis added).
[105] SJR at 49-51.
[106] *Id.* at 50-51.

improperly: (1) looked to the LLC Act first; and (2) applied the LLC Act even though the Operating Agreement addresses the relevant issue and conflicts with Section 18-302(d). Under the Trial Court's approach, an operating agreement would have to purposefully and clearly override discretionary terms in the LLC Act, contravening the statute's backstop purpose and making the LLC Act, rather than the governing LLC agreement, the presumptive authority. That approach is contrary to the LLC Act's express language and this Court's precedent. *See* 6 *Del. C.* § 18-1101(b); *Holifield*, 304 A.3d at 922.

Second, even if its deference to the LLC Act were appropriate, the Trial Court's "role [was] limited to an application of the literal meaning of those words" in the statute. *In re Adoption of Swanson*, 623 A.2d 1095, 1096-97 (Del. 1993). Section 18-302(d) imposes the default rule "[u]nless otherwise provided in a limited liability agreement,"[107] *not* "unless an LLC Agreement explicitly overrides the default rule." Thus, the Trial Court improperly read requirements into Section 18-302(d), and Paragraph 8.05(a) controls because it "otherwise provide[s]."

Third, even if the Trial Court's heightened standard were correct, it is satisfied because Paragraph 8.05(a) expressly says that action by written consent requires

[107] Emphasis added.

"unanimous written consent of the Members,"[108] *not* those with the votes necessary to act at a meeting attended by those "entitled to vote."

The Trial Court relied on *Paul v. Delaware Coastal Anesthesia, LLC*,[109] in which the Court of Chancery found that an LLC member had been removed by written consent under Section 18-302(d). 2012 WL 1934469, at *2-3 (Del. Ch. May 29, 2012). The agreement at issue in *Paul* did not expressly authorize or disallow action by written consent. *Id.* at *1-2. Thus, Section 18-302(d) applied because the LLC agreement did "not 'otherwise provide,' so as to preempt, actions by written consent to terminate a member." *Id.* at *3.

That the agreement in *Paul* did not address the salient issue is key. Indeed, "[e]ach default rule [in the LLC] Act is a statutory provision that governs *only in the absence of an agreement among the members covering* ***the particular point***. If the limited liability company agreement provides otherwise regarding **the relevant subject matter**, *the statutory provision does* ***not*** *control*." *Achaian*, 25 A.3d at 803 n.11 (brackets and italics in original, other emphasis added) (quoting Robert L. Symonds, Jr. & Matthew J. O'Toole, Symonds & O'Toole on Delaware Limited Liability Companies, § 1.039[A][2] (2007)). *See also Holifield*, 304 A.3d at 922.

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[108] A1474 (emphasis added).
[109] SJR at 50-51.

In *Achaian*, the Court of Chancery made this point in finding that an LLC agreement "contain[ing] specific provisions bearing on Interests in [the LLC] and their transferability" had displaced the LLC Act's default rule that an assignee "only receives the assigning member's economic interest." *Id.* at 802-805 (emphasis added). The defendant unsuccessfully argued that the LLC Act applied because "none of the provisions in the LLC Agreement clearly reverse[d] the default rule." *Id.* at 806 (emphasis added). That rejected argument in *Achaian* is essentially the rule that the Trial Court applied here.

Unlike the agreement in *Paul*, but like the agreement in *Achaian*, the Operating Agreement addresses the relevant issue—action by written consent—and provides a standard that conflicts with the LLC Act. Thus, *Paul* is inapt authority, Paragraph 8.05(a) preempts Section 18-302(d), and action by written consent under the Operating Agreement requires "unanimous written consent of the Members . . ."[110]

The Trial Court also declined to enforce Paragraph 8.05(a) because doing so would effectively allow PJT to "block" its expulsion.[111] But the Trial Court's duty was to enforce the unambiguous language the parties agreed to, not disregard that

[110] A1474 (emphasis added).
[111] SJR 47-52.

language based on its own after-the-fact determination as to what made sense. *See Holifield*, 304 A.3d at 924; *Cantor Fitzgerald*, 312 A.3d at 677.

Indeed, "this Court has observed . . . that the doctrine of caveat emptor is fitting in the alternative entity context." *Holifield*, 304 A.3d at 923 (cleaned up). Thus, "[e]ven if the bargain they strike ends up a bad deal for one or both parties, the court's role is to enforce the agreement as written," *Glaxo Grp.*, 248 A.3d at 919 (emphasis added), and the Trial Court "erred by imposing its notion of reasonableness" on the Operating Agreement. *Cantor Fitzgerald*, 312 A.3d at 677 (cleaned up).

Given "[t]he basic business relationship between the" Members, *Chicago Bridge & Iron Co. N.V. v. Westinghouse Elec. Co. LLC*, 166 A.3d 912, 927 (Del. 2017), an interpretation that allows PJT to effectively block its expulsion by written consent, with no notice or opportunity to be heard, is also not outlandish. PJT provided all the capital, while Founders invested nothing.[112] It is thus not outside the realm of reasonableness for the parties to have agreed to give PJT maximum cover to protect its interest by preventing Founders from expelling PJT without its participation, or even notice that such action was being taken, allowing them to take PJT's interest and leaving it with nothing in return.

[112] A895.

For these reasons, the Expulsion was invalid because it was approved by written consent without approval from all Members. Thus, even if expulsion by written consent were permitted under the Operating Agreement, the Court should reverse the Summary Judgment Ruling.

b. *The Trial Court Erred in Making the Second SJR Determination.*

After mistakenly determining that Founders could expel PJT by written consent approved by those "entitled to vote" at an expulsion meeting, the Trial Court made the Second SJR Determination and ruled that the "plain" and "only logical reading" of the Operating Agreement is that "everybody other than the [Member] being expelled" is "entitled to vote" on expulsion.[113] Thus, according to the Trial Court, PJT was not "entitled to vote" on its own Expulsion, and the Expulsion was procedurally valid because Founders—the only Members who, in the Trial Court's estimation, were "entitled to vote"—approved the Resolution.[114] Contrary to what the Trial Court found, the Second SJR Determination conflicts with and is unsupported by the Operating Agreement's unambiguous language.

Paragraph 15.04 says, "[a] Member may be expelled . . . by unanimous vote of all other Members (not including the Member to be expelled) . . . ."[115]

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[113] SJR at 51, 52.
[114] *Id.* at 51.
[115] A1485 (emphasis added).

"Unanimous" means "[a]greeing in opinion; being in complete accord" or "[a]rrived at by the consent of all." *Unanimous*, Black's Law Dictionary (12th ed. 2024). So "unanimous vote" in Paragraph 15.04 must mean an agreement in opinion or accord by assembled voters; it is not equivalent to those with a right to attend a meeting, or, in other words, those who are "entitled to vote." Thus, the underlined language above refers to the *votes necessary* at a meeting to expel a Member—the voting standard that must be achieved to effectuate an expulsion—not those "*entitled to vote*" at an expulsion meeting.

Reinforcing that conclusion, Paragraph 15.04 does not excuse Paragraph 8.01(a)'s quorum or notice requirements. A quorum requires Members with "more than fifty percent (50%) of the Percentage Interests of all Members,"[116] and PJT has a 50% interest.[117] Thus, even though PJT's affirmative vote may not be required for its own expulsion to take effect, reading Paragraph 15.04 with Paragraph 8.01 establishes that PJT's presence is required for a valid expulsion meeting and that PJT is "entitled to vote" at such meetings.

PJT thus has a right to attend and vote at expulsion meetings; to-be-expelled Members also have notice rights and the right to be heard. The Trial Court's contrary conclusion—that expelling Members may effectuate an expulsion without involving

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[116] A1460.
[117] A681; A1493.

or even notifying the to-be-expelled Member—is astonishing because it allows expelling Members to provide no notice of anticipated expulsion to the Member affected by the loss of rights and property and no opportunity to deny the action to be taken, thereby depriving the targeted Member of its bargained-for rights under the proverbial cover of dark. That result makes no sense and contravenes the Operating Agreement's unambiguous language.

The Trial Court essentially read a carve-out into the Operating Agreement that excuses the quorum requirement for expulsion meetings under Paragraph 15.04, reasoning that otherwise, "PJT could always block its own expulsion . . . ."[118] The Operating Agreement contains no such carve-out. Thus, the Trial Court's approach fails because, as discussed above with the First SJR Determination, even though it viewed the Operating Agreement as unfair or unreasonable, the Trial Court was required to enforce the language the parties agreed to. *See Holifield*, 304 A.3d at 923-924; *Glaxo Grp.*, 248 A.3d at 919; *Cantor Fitzgerald*, 312 A.3d at 677.

The Trial Court also reasoned that construing Paragraph 15.04 as allowing PJT to block its expulsion "defeats the whole purpose of the provision."[119] But as written, Paragraph 15.04 is a purposeful provision, not superfluous. For example, PJT and a Founder could call a meeting to expel another Founder.

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[118] SJR at 47.
[119] *Id.*

For these reasons, the Trial Court erred in making the Second SJR Determination. Thus, even if *arguendo* expulsion by written consent were permitted and the Trial Court correctly decided the First SJR Determination, this Court should reverse the Summary Judgment Ruling.

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The Summary Judgment Ruling contravened the foundational principles underlying Delaware LLC law. Indeed, the Trial Court disregarded the Operating Agreement's unambiguous language, inappropriately relied on the LLC Act rather than making the Operating Agreement paramount, and superimposed its subjective judgment as to reasonableness. Thus, the Summary Judgment Ruling plants a seed of doubt as to Delaware's commitment to enforcing how private parties order their affairs, breaking with the General Assembly's policy choice to "give the maximum effect to the principle of freedom of contract and to the enforceability of limited liability company agreements." 6 *Del. C.* § 18-1101(b). For these reasons and those discussed above, this Court should reverse the Summary Judgment Ruling.

3. PJT Is Entitled to Indemnification Under the Operating Agreement.

Under Paragraph 18.11 of the Operating Agreement, a Member who breaches the Operating Agreement must indemnify other Members.[120] Because the Expulsion

[120] A1490.

was procedurally invalid, Founders breached the Operating Agreement and PJT is entitled to indemnification under Paragraph 18.11. Thus, the Trial Court erred in not granting PJT summary judgment on the Indemnification Claim, and this Court should remand so the Trial Court can decide the amount of indemnification to which PJT is entitled.

II. THE SUMMARY JUDGMENT RULING IS IMPERMISSIBLY BASED ON THE TRIAL COURT'S *SUA SPONTE* ANALYSIS.

A. QUESTION PRESENTED

Whether the Trial Court erred by basing the Summary Judgment Ruling on an analysis it crafted *sua sponte*, which was not presented by the parties.

The arguments in this section were not raised below because they respond to issues the Trial Court raised *sua sponte* in the Summary Judgment Ruling. For the reasons discussed in the following sections, the Court should consider these arguments under Supreme Court Rule 8.

B. STANDARD OF REVIEW

The Court reviews "questions of law" and "summary judgment ruling[s] de novo." *Croda*, 282 A.3d at 547; *Holifield*, 304 A.3d at 921.

Under Rule 8, "[o]nly questions fairly presented to the trial court may be presented for review; provided, however, that when the interests of justice so require, the Court may consider and determine any question not so presented." Thus, this Court may review an issue that was not raised below "if it finds that the trial court committed plain error requiring review in the interests of justice." *Smith v. Delaware State Univ.*, 47 A.3d 472, 479 (Del. 2012) (quotations omitted). "The doctrine of plain error is limited to material defects which are apparent on the face of the record; which are basic, serious and fundamental in their character, and which clearly

deprive an accused of a substantial right, or which clearly show manifest injustice." *Id.* (cleaned up).

C. MERITS OF ARGUMENT

"[O]ur adversarial system of adjudication" is based on "the principle of party presentation." *United States v. Sineneng-Smith*, 590 U.S. 371, 375 (2020).[121] As the United States Supreme Court has explained: "In our adversary system, in both civil and criminal cases . . . we rely on the parties to frame the issues for decision and assign to courts the role of neutral arbiter of matters the parties present." *Greenlaw*, 554 U.S. at 243. The Trial Court disregarded these principles.

As discussed, the Trial Court based the Summary Judgment Ruling on its determination as to which Members are "entitled to vote" at an expulsion meeting under Paragraph 15.04.[122] Founders discussed the "entitled to vote" concept in their briefing and at oral argument,[123] but the Trial Court used that idea to shape its own analysis using the following elements, which no party raised:

1. While not expressly set forth in Paragraph 15.04, the "entitled to vote" concept applies to that provision based on the "shared knowledge among corporate entity lawyers, otherwise known as common

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[121] This Court has looked to party presentation principles as established by the U.S. Supreme Court. *Compare McElrath v. Kalanick*, 224 A.3d 982, 992 (Del. 2020), *with Greenlaw v. United States*, 554 U.S. 237, 244 (2008).

[122] *Supra* Statement of Facts, § I.B.

[123] A170; A190-91; A203; A205; A207; SJR at 16, 20.

knowledge," because "[e]verybody knows that a voting calculation is always based on those who are entitled to vote," which concept is incorporated into the Delaware General Corporation Law and the LLC Act.[124]

2. "To evaluate a written consent, you start with an assumption of a meeting, and you imagine a hypothetical meeting where everyone entitled to vote shows up. You then determine whether the consent clears the voting standard that would apply. . . . The meeting requirement flows into the consent requirement."[125]

3. Under Paragraph 8.01(a), "Simple Majority" establishes, on one hand, the voting standard that must be achieved for Member action and, on the other hand, those that are "entitled to vote," and so reading Paragraph 15.04 with Paragraph 8.01(a) establishes that the phrase "unanimous vote of all other Members (not including the Member to be expelled)" in Paragraph 15.04 sets, on one hand, the standard that must be achieved for expulsion to occur and, on the other hand, those that are "entitled to vote" at an expulsion meeting.[126]

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[124] SJR at 43-46.
[125] *Id.* at 45.
[126] *Id.* at 42-43, 46-47.

That the Trial Court disregarded party presentation principles, by itself, warrants reversal or remand. *See, e.g.*, *In re Chrysler Pacifica Fire Recall Prods. Liab. Litig.*, 143 F.4th 718, 727 (6th Cir. 2025); *Astellas Pharma, Inc. v. Sandoz Inc.*, 117 F.4th 1371, 1377-799 (Fed. Cir. 2024); *Todd R. v. Premera Blue Cross Blue Shield of Alaska*, 825 F. App'x 440, 441, 442 (9th Cir. 2020).

That is especially true because, by relying on its own analysis, the Trial Court prevented PJT from fully exploring and elucidating issues with the Summary Judgment Ruling. For instance, it is not clear that the parties intended: (1) Paragraph 15.04 to be read in light of the "common knowledge" as referred to by the Trial Court in the first paragraph above; or (2) to follow the principles discussed in the second and third paragraphs. At best, especially since those concepts conflict with the Operating Agreement's unambiguous language, the issues the Trial Court relied on create ambiguities in the Operating Agreement concerning the Members' intent that should not have been resolved on summary judgment. *See GMG Cap.*, 36 A.3d at 784.

For these reasons, separate and independent from the argument above in the first Argument section, the Court should reverse and/or remand the Summary Judgment Ruling.

III. IF THE SUMMARY JUDGMENT RULING STANDS, THE COURT SHOULD REVERSE THE EXPULSION RULING.

A. QUESTIONS PRESENTED

Whether the Trial Court erred by finding that Founders proved at trial that Reason One and Reason Six satisfied expulsion standards in the Operating Agreement, which improperly led to the order requiring PJT to indemnify Founders.

These issues were preserved at A41-A54, A678-94, A1311-91, A1439-48.

B. STANDARD OF REVIEW

In reviewing a post-trial decision, the Court "reviews questions of law de novo" but "will not overturn . . . factual findings unless they are clearly erroneous." *Klaassen v. Allegro Dev. Corp.*, 106 A.3d 1035, 1043 (Del. 2014).

C. MERITS OF ARGUMENT

Paragraph 15.04 is essentially "a for-cause expulsion" provision.[127] So at trial, Founders had the burden to prove that the reasons for the Expulsion—rather than any reason they could drum-up after-the-fact—satisfied a contractually agreed-upon expulsion standard. *See Buck v. Viking Holding Mgmt. Co.*, 2024 WL 4352368, at *6 (Del. Super. Ct. Sept. 30, 2024); *A & J Cap., Inc. v. Law Off. of Krug*, 2019 WL 367176, at *1, 11 (Del. Ch. Jan. 29, 2019). Thus, Founders had the burden to prove

[127] *Id.* at 40.

that one of the nine reasons in the Resolution satisfied an expulsion standard in Paragraph 15.04(a)-(d) of the Operating Agreement.

The only expulsion standards at issue on appeal are those in Paragraph 15.04(a) and (b). The former permits expulsion when a Member has "willfully violated any provision of" the Operating Agreement,[128] and the latter permits expulsion if a Member "commit[s] . . . gross negligence against the Company or one or more members of the Company."[129] A Willful Violation under Paragraph 15.04(a) requires a Member to intentionally and knowingly breach the Operating Agreement,[130] while Gross Negligence under Paragraph 15.04(b) requires recklessness.[131]

The Trial Court found that Reason One established a Willful Violation and Gross Negligence[132] and that Reason Six established Gross Negligence.[133] The Trial Court was wrong on both counts.

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[128] A1485 (emphasis added).
[129] *Id.* (emphasis added).
[130] Opinion at 29-33.
[131] *Id.* at 27-29.
[132] *Id.* at 40-44.
[133] *Id.* at 45-48.

1. The Trial Court Erred in Finding That Reason One Justified the Expulsion.

With Reason One, Founders claimed they were expelling PJT because it had not paid the Additional Capital Contribution.[134] PJT paid close to $200,000 and had committed to paying more,[135] and under Paragraph 4.02 of the Operating Agreement, PJT had no deadline for paying the Additional Capital Contribution.[136] Thus, Reason One is baseless and cannot justify the Expulsion.

The Trial Court determined that Reason One warranted expulsion because PJT "repudiated" its obligation to provide more capital.[137] But Founders did not assert "repudiation" in the Resolution as a reason for the Expulsion.[138] An after-the-fact justification cannot justify the Expulsion. *See Buck*, 2024 WL 4352368, at *6; *A & J Cap.*, 2019 WL 367176, at *1, 11.

Even if repudiation were on the table, PJT did not repudiate its duty to pay the Additional Capital Contribution. "Under Delaware law, repudiation is an outright refusal by a party to perform a contract or its conditions . . . ." *CitiSteel USA, Inc. v. Connell Ltd. P'ship*, 758 A.2d 928, 931 (Del. 2000) (emphasis added). The Trial Court relied on communications in which Mr. Trematerra (1) asked for a "buy out,"

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[134] A2755.
[135] A1407-11.
[136] *See* A1455; A1463. *See also* A889-90.
[137] Opinion at 41-44.
[138] *See* A2755-57.

(2) insisted on the Restructuring, and (3) after Founders refused to do so, declined to open the Beverly Hills Restaurant.[139] None of those communications evidence an "outright refusal" to pay the Additional Capital Contribution in accordance with the Operating Agreement.

The Trial Court also overlooked evidence. Even after Founders induced Mr. Trematerra into signing the Lease and the Personal Guaranty (while simultaneously exploring expulsion), rejected the Restructuring, and refused to open the Beverly Hills Restaurant, Mr. Trematerra remained willing to pay the Additional Capital Contribution.[140] *After* the communications the Trial Court relied on, Mr. Trematerra remained willing to pay for a restaurant, telling Mr. D. Costanzo, "I am looking at each location on a per basis location in Florida. . . . You come up with a location it might be good it might not. I have to vet it and I will when I get back into town . . . ."[141] At trial, Mr. Trematerra confirmed his continued willingness to pay,[142] and payment records from Q2 2023 corroborate that testimony.[143] So the Trial Court's ruling makes no sense because PJT continued paying expenses, evidencing his commitment to, not repudiation of, its obligations.

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[139] Opinion at 41-42.
[140] A1122-23; A1138; A2753.
[141] A2366.
[142] A1122-23.
[143] A1407-11.

The Trial Court found that, by itself, PJT's decision to not fund the Beverly Hills Restaurant constituted repudiation because, "[a]fter Trematerra secured the Lease, he was obligated to fund the development of a store at that location using the Additional Capital Contribution he had agreed to provide."[144] But the Operating Agreement does not obligate PJT to fund any particular restaurant or project. Rather, as Mr. D. Costanzo agrees,[145] the Operating Agreement provides that the Additional Capital Contribution has to be paid "at such amounts and at the discretions [sic] of PJT."[146] PJT did not repudiate that obligation.

There is more. A Willful Violation under Paragraph 15.04(a) requires an intentional and knowing violation of the Operating Agreement.[147] And Gross Negligence requires evidence that PJT "consciously disregarded" a risk. *See In re McDonald's Corp. S'holder Derivative Litig.*, 291 A.3d 652, 689 n.21 (Del. Ch. 2023) (discussing gross negligence in the context of the duty of care and quoting 11 *Del. C.* § 231(a), which defines "recklessness" as "when 'the person is aware of and consciously disregards a substantial and unjustifiable risk that the element exists or will result from the conduct'").[148] The Expulsion Ruling cites no evidence demonstrating that PJT acted with either of the necessary mental states.

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[144] Opinion at 43.
[145] A889-90.
[146] A1463.
[147] Opinion at 29-33.
[148] *Id.* at 27-29 (Gross Negligence requires "recklessness").

2. The Trial Court Erred in Finding That Reason Six Justified the Expulsion.

The Trial Court found that Reason Six—the Lease Cancellation[149]—established Gross Negligence under Paragraph 15.04(b).[150] But Founders "were not going to go to California," and so Mr. Trematerra determined that he "had the right to try to mitigate and - - cancel the lease and mitigate the damages as best as possible, try to negotiate a settlement."[151] That is common sense. Mr. Trematerra could not operate a restaurant without Founders,[152] and he had personal liability for the Lease.[153] Mitigating his and the Company's harm by cancelling the Lease was reasonable, not reckless.

The Trial Court disagreed, calling Mr. Trematerra reckless for cancelling the Lease so soon after Founders' refusal to open the Beverly Hills Restaurant.[154] While the Trial Court's prescribed course of action—discussing matters with Founders before cancelling the Lease[155]—may be reasonable in the Trial Court's judgment, it was not the only rational option.

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[149] A2756.
[150] Opinion at 45-48.
[151] A1254-55.
[152] A1113.
[153] A682; A1885-86.
[154] Opinion at 48.
[155] *Id.*

Consideration of the Lease Cancellation must be framed contextually, including by: (1) Founders' refusal to proceed with the Beverly Hills Restaurant *after* Mr. Trematerra signed the Lease;[156] (2) Mr. Trematerra's inability to operate a restaurant without Founders;[157] (3) Mr. Trematerra's personal liability for the Lease;[158] and (4) Founders' about-face on their willingness to proceed with the Restructuring,[159] even though Mr. D. Costanzo's assurance on the Restructuring is what induced Mr. Trematerra to sign the Lease.[160] Given that context, Mr. Trematerra was not reckless.

The Trial Court also found that Mr. Trematerra was reckless because he cancelled the Lease without convening a Member meeting even though he purportedly knew that such a meeting was required.[161] Founders never asserted or argued this point. The absence of a meeting is thus an after-the-fact justification that cannot justify the Expulsion, *see Buck*, 2024 WL 4352368, at *6; *A & J Cap.*, 2019 WL 367176, at *1, 11, and the Trial Court contravened party presentation principles in finding that it did.[162]

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[156] A2754.
[157] A1113.
[158] A682; A1884-85.
[159] A2753.
[160] A1107.
[161] Opinion at 45-47.
[162] *Supra* Argument, § II.C.

Otherwise, Mr. Trematerra did not knowingly disregard a meeting requirement. Rather, evidence from trial shows that it was reasonable for Mr. Trematerra to act without a meeting. Founders gave Mr. Trematerra authority over real estate matters,[163] including the Lease.[164] And at trial, in response to the Trial Court's questioning about Mr. Trematerra's discretion with regard to restaurants, Mr. D. Costanzo testified, "[a]t the end of the day, if he didn't want to do something and he was strong about it, he [Mr. Trematerra] had that ability to make that decision."[165]

3. The Trial Court Erred in Making the Post-Trial Indemnification Rulings.

Based on its Expulsion Ruling, the Trial Court ordered PJT to indemnify Founders under Paragraph 18.11 of the Operating Agreement.[166] As the Trial Court reached the Expulsion Ruling in error, it was not PJT that breached the Operating Agreement, but Founders through the Expulsion. Thus, PJT has a right to indemnification under Paragraph 18.11, and Founders do not.

* * *

For the reasons above, the Trial Court erred in finding that Reason One and Reason Six satisfied Paragraph 15.04(a) and (b). Thus, Founders breached the Operating Agreement with the Expulsion, and this Court: (1) should reverse the

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[163] *See, e.g.*, A1906.
[164] A991.
[165] A827 (emphasis added).
[166] Opinion at 58-59; Final Order, ¶ 3.

Expulsion Ruling: and (2) reverse and remand the Trial Court's post-trial indemnification rulings.

IV. IN THE ALTERNATIVE, THE COURT SHOULD REVERSE THE FORFEITURE RULING.

A. QUESTIONS PRESENTED

Assuming *arguendo* that the Expulsion is valid under Paragraph 15.04 of the Operating Agreement such that PJT is a "Defaulting Member" under Paragraph 15.01, whether the Trial Court erred in: (1) finding that Founders had successfully invoked the forfeiture remedy under Paragraph 15.01 even though remedies under that provision are available only "upon notice" to the "Defaulting Member," which Founders never provided; and (2) entering judgment for Founders on the Indemnification Claim, to the extent it relates to the Fair Value Claim.

Issues relating to (1) were preserved at A1389-90. PJT did not have an opportunity raise issues relating to (2) with the Trial Court because issues relating to the Fair Value Claim—including the extent to which that claim gave PJT a right to indemnification—were stayed[167] when the Trial Court entered judgment for Founders.[168]

B. STANDARD OF REVIEW

In reviewing a post-trial decision, the Court "reviews questions of law de novo" but "will not overturn . . . factual findings unless they are clearly erroneous." *Klaassen*, 106 A.3d at 1043.

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[167] A337.

[168] Final Order, ¶ 1.

C. MERITS OF ARGUMENT

Expelled LLC members are generally entitled to fair value compensation for their membership interests. *See Domain Assocs., L.L.C. v. Shah*, 2018 WL 3853531, at *14-15 (Del. Ch. Aug. 13, 2018); *Walker v. Res. Dev. Co., L.L.C. (DE)*, 791 A.2d 799, 814-15 (Del. Ch. 2000). Thus, assuming *arguendo* that the Expulsion was valid, PJT is entitled to fair value for its interest in the Company.

The Trial Court held that PJT was not entitled to fair value for its Company interest.[169] Concluding that the Expulsion made PJT a "Defaulting Member" under Paragraph 15.01 of the Operating Agreement, the Trial Court ruled that PJT had "no basis for . . . seek[ing] a fair value determination" because Founders had elected to seek "forfeiture" under Paragraph 15.01.[170] That ruling was erroneous.

Paragraph 15.01 says, "the Company may exercise, on notice to that Member . . . one or more of the following remedies . . . ."[171] Thus, even if a Member is expelled under Paragraph 15.04 and becomes a "Defaulting Member," expelling Members cannot enforce a Paragraph 15.01 remedy unless they notify the expelled Member that they are doing so.

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[169] *Id.*, ¶ 2.
[170] *Id.*, ¶ 2.d.
[171] A1483 (emphasis added).

Founders never notified PJT that they were seeking forfeiture.[172] So forfeiture was unavailable for the Trial Court to award as a remedy. Thus, the Trial Court erred in ruling that PJT forfeited its interest in the Company, and if the Court affirms the Summary Judgment Ruling and the Expulsion Ruling, it should reverse the Forfeiture Ruling.

Also, if the Fair Value Claim remains viable, then PJT will have an opportunity to prove that Founders breached the Operating Agreement by expelling PJT without paying fair value. If PJT were to prove such a breach, it would be entitled to indemnification under Paragraph 18.11 of the Operating Agreement. Thus, if the Court reverses the Forfeiture Ruling, it should also reverse the Trial Court's decision entering judgment for Founders on the Indemnification Claim.

[172] *See* A2755-57.

CONCLUSION

For the reasons above, PJT respectfully requests that the Court reverse and/or remand the Trial Court's Summary Judgment Ruling, Expulsion Ruling, Forfeiture Ruling, and/or indemnification rulings.

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CERTIFICATE OF SERVICE

I hereby certify that on October 23, 2025, a true and correct copy of the foregoing *Appellant's Opening Brief* was caused to be served on the following counsel of record via File & ServeXpress:

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