



IN THE

Supreme Court of the State of Delaware

AIM VENTURA CAPITAL FUND,
LLC, and AIM VENTURA CO-
INVEST I, LLC,

Intervenor-Plaintiffs Below,
Appellants,

v.

GABB WIRELESS, INC., Defendant-In-
Intervention Below, and STEPHEN
DALBY and JANA DALBY, Plaintiffs-
Below, Appellees.

No. 393, 2025

Appeal from the Court of Chancery
of the State of Delaware

C.A. No. 2025-0136-NAC

APPELLEES STEPHEN DALBY AND JANA DALBY'S ANSWERING BRIEF

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TABLE OF ABBREVIATIONS

AIM	AIM Ventura Capital Fund, LLC, AIM Ventura Co-Invest I, LLC, and AIM Ventura Co-Invest II, LLC
Blue Diamond	Blue Diamond Capital, LLC, Bingham Family Alaska, LLC, and Blue WCS, LLC (<i>see</i> Op. 26 n. 119).
CIS	Confidential Information Statement, dated January 14, 2025 (B1777-B1785)
Company	Gabb Wireless, Inc.
DCC	Delaware Corporate Counsel
LOI	Letter of Intent
LRC	Landis, Rath & Cobb LLP
LSA	Loan and Security Agreement with Zefcom, LLC, dated November 1, 2023 (B930-B961)
Moelis	Moelis & Company
Fee Ruling	Transcript of Oral Argument on Plaintiffs' Petition for Attorneys' Fees, Costs, and Expenses, dated November 6, 2025 (attached as Exhibit E to Appellants' Corrected Opening Brief, Dkt. 26)
FFA	Financing Facilitation Agreement, dated October 5, 2023 (B924-B929)
OB	Appellants' Corrected Opening Brief (Dkt. 26)
Op.	August 29, 2025 Memorandum Opinion, Exhibit A to Appellants' Corrected Opening Brief (Dkt. 26)
RAM	Ross Aronstam & Moritz LLP

Sandlot	Sandlot Opportunity Partners Fund IV LLC, Sandlot Opportunity Partners Fund IX LLC, and Sandlot Partners Opportunity Fund XIV LLC
Settlement Agreement	Settlement Agreement, dated June 2, 2022 (B893-B904)
Telispire	Zefcom, LLC
Voting Agreement	Amended and Restated Voting Agreement, dated September 15, 2022 (A0073-A0100)

NATURE OF PROCEEDINGS

Gabb Wireless, Inc. provides safer cellular phones for children. Stephen Dalby, Gabb's founder and largest stockholder, controls 3 of 5 Board seats and is contractually protected against both dilution and loss of the "CEO Director" seat under a Voting Agreement and a Settlement Agreement until closing of the "Series B"—defined as "Gabb Wireless's next round of bona fide financing for the primary purpose of capital." Gabb's remaining two director seats are appointed by preferred stockholders AIM and Sandlot. Gabb management has strong ties to AIM.

This action arose from the attempted January 28, 2025 removal of Dalby from Gabb's Board and associated purported January 30, 2025 Board vote to approve AIM's attempted highly dilutive note conversion. As the Confidential Information Statement seeking Dalby's removal recites, "Section 1.2(c) of the Voting Agreement provides that Dalby shall hold the CEO Director seat" but "[n]otwithstanding Section 1.2(c) of the Voting Agreement," Dalby could be "removed *for cause* under Section 1.3(d) of the Voting Agreement in accordance with applicable law." B1779.

Dalby and his wife Jana filed suit under 8 *Del. C.* § 225 against AIM's and Sandlot's designees, seeking a declaration that Dalby's removal was invalid under the Voting Agreement and, therefore, the purported January 30 vote to approve the Note Conversion lacked a quorum and was invalid.

AIM moved to intervene. By agreement of the parties and court order, (1) AIM was permitted to intervene and participate fully in the Section 225 action and to file a plenary complaint seeking specific performance of the Note Conversion to be litigated on the same expedited schedule as the Section 225 action and tried in a single combined trial on the merits, and (2) the Dalbys would litigate in opposition to AIM's complaint-in-intervention.

Trial was held May 8-9, 2025. The trial record included 197 stipulated facts, 900+ exhibits, thirteen depositions, and nine trial witnesses. The Court of Chancery invalidated Dalby's removal and the January 30 Board vote, and denied AIM's request for specific performance. The trial court found that the Note Conversion was "anything but" a "bona fide" "financing for the primary purpose of raising capital." Op. 97. Rather, the trial court held that "the AIM Note conversion reflects the culmination of a long-running effort by non-neutral management, working with AIM, to vitiate Dalby's bargained-for rights under the Settlement Agreement and Amended and Restated Voting Agreement and thereby 'get rid' of the Company's founder and controller." Op. 96-97.

The Dalbys filed a fee petition under contractual fee-shifting provisions in the Voting Agreement and Settlement Agreement. The trial court ordered the AIM entities that were parties to the contracts to pay the Dalbys \$10,487,304.25 in fees, costs, and expenses. B710.

On November 24, 2025, AIM filed an amended notice of appeal challenging (1) the denial of AIM's request for specific performance and (2) the grant of the Dalbys' petition for contractual fee-shifting.

No party timely appealed the trial court's ruling invalidating Dalby's removal or invalidating the January 30 Board vote.

SUMMARY OF ARGUMENT

1. Denied. The Court of Chancery did not abuse its discretion in denying AIM specific performance because AIM “failed to show that the balance of the equities clearly and convincingly tips in AIM’s favor.” Op. 98.

2. Denied. The Court of Chancery did not abuse its discretion in granting the Dalbys’ petition for a contractual award of attorneys’ fees, costs, and expenses under the parties’ agreements.

STATEMENT OF FACTS

A. Parties and Relevant Non-Parties

The Dalbys. Dalby founded Gabb and holds 35.6 million shares of Gabb's common stock. B2. Dalby "owns almost 49 percent ... of the company." B108. Dalby has long held the "CEO Director" board seat. Jana Dalby is a member of Gabb's Board. B3.

AIM and Kastner. AIM Ventura Capital Fund, LLC is a Utah-based growth equity fund affiliated with Adams Wealth Advisors. Op. 5-6; B4; B121; B214-15.

AIM Ventura Capital Fund, AIM Ventura Co-Invest I, LLC and AIM Ventura Co-Invest II, LLC invested in Gabb's "Seed" and "Series A1" financing rounds. Op. 6-7; B4.

Under the Voting Agreement, AIM appoints one "Preferred Director" to Gabb's Board. AIM has over time designated Greg Cole, Craig Adams, David Kastner, and Cormac Murphy as AIM's "Preferred Director" on Gabb's board. Op. 7; B5. Kastner currently holds that seat. B3. Kastner is employed by Adams Wealth (B120) and is on AIM's investment committee (B742). AIM's June 2024 and October 2024 investor updates identify Kastner as part of AIM's "Portfolio Management." B998; B1250.

Sandlot and Mendez. Sandlot invested in Gabb’s “Series A” financing round. B6. Under the Voting Agreement, Sandlot appointed Jeff Mendez as its “Preferred Director.” B3; B6; B246.

Gabb Management. Gabb’s CEO was Nate Randle. B6. Randle deleted relevant emails and texts, including as recently as January 2025. B242; B761-62, B765-67.

When AIM invested, Greg Cole became Gabb’s CFO. Op. 6; B6. Cole is “a co-founder of the AIM funds and holds a 50% interest in ... the manager of the AIM funds.” Op. 6; B6; B200-01. Cole is also an investor in AIM Ventura Capital Fund, AIM Ventura Co-Invest I, and other AIM entities. Op. 6; B6; B206. AIM’s website and June and October 2024 investor updates list Cole as “Partner & Managing Director” or member of “Portfolio Management” for AIM. Op. 6; B1960; B998; B1250. AIM’s marketing materials instruct investors to contact Cole at his AIM email address. B1958. Cole spends “about one day a week” working at the Adams Wealth Advisors office. Op. 6; B207.

Gabb’s GC is Vanessa Clayton. B6. Clayton was General Counsel for seven years at Homie, an AIM portfolio company where Cole was a board member. B6; B108; B207.

Blue Diamond. Brandon Ball is CFO and partner at Blue Diamond Capital. B9. Blue Diamond holds Gabb debt and preferred stock. Op. 26 n.119.

B. The 2021 Action, Settlement Agreement, and Voting Agreement

Following AIM and Sandlot's investment, Gabb amended its charter to provide for a five-director Board under which Dalby appointed three "Common Directors" and AIM and Sandlot each appointed one "Preferred Director." Op. 7; B9; B834-35 § 3.2. AIM appointed Cole. Op.7. Sandlot appointed Mendez. Op. 8.

Before Dalby could appoint two additional Common Directors, Cole and Mendez voted to remove Dalby as CEO. Op. 8; B9-10; B144-45. Dalby sued. *See Dalby v. Cole, et al.*, C.A. No. 2021-1068-PAF.

On June 2, 2022, the parties resolved that litigation through the Settlement Agreement. Op. 9; B893. Dalby agreed to step down as CEO in favor of Randle—AIM and Sandlot's desired candidate. Op. 9 & n.29. Randle would "serve ... through the initial closing of Gabb Wireless's next round of bona fide financing for the primary purpose of capital ... (the 'Series B')." B894 § 1. The parties agreed that Cole would leave the Board but continue as CFO. Op. 9; B894-95 § 2.

Under the Settlement Agreement, Dalby would be "CEO Director" until the Series B round closed or a new CEO was appointed, whichever is later. B895 § 3(a).

The Settlement Agreement's "No Additional Dilution" provision states: "[i]f additional capital needs to be raised prior to a Series B round of financing, any dilution shall be borne solely b[y] AIM Ventura and Sandlot and not b[y] Dalby." Op. 10 (alterations in original); B897 § 7.

On September 15, 2022, the parties executed the Voting Agreement. Op. 11; A0073-100. The Voting Agreement also gave Dalby the right to designate two Common Directors and hold the “CEO Director” seat. Op. 11; A0074 § 1.2(c). And some of Dalby’s protections under the Voting Agreement terminate upon the “Next Equity Financing,” defined as “the initial closing of the Company’s next bona fide equity financing for the primary purpose of raising capital.” Op. 11-12; A0074 § 1.2(c).

C. The First Removal Effort

“[W]ithin months of signing the Settlement Agreement, the Preferred Directors and Company management had resumed their campaign to remove Dalby from the Company.” Op. 17. Cole’s notes from Fall 2022 discuss “Randle taking the CEO director Board seat How do we make this happen?” (Op. 15; B858); suggest (wrongly) “informing Dalby that the No Additional Dilution provision was no longer in effect” (Op. 15-16; B858); ask “How do we get rid of his rights on the 2 common seats?” (Op. 16; B863); and “#1 goal removal” and “get 3 seats” (Op. 16; B871).

D. The FFA

The Preferred Directors and management wanted Dalby to sign a Financing Facilitation Agreement pre-agreeing to vote for any financing round with a pre-money valuation of \$200 million and a secondary offering allowing Dalby to sell at

least \$12 million of common stock. Op. 25; B158; B925. They also wanted Dalby to replace Jana as a Common Director with Spencer Tall. Op. 25 & n.117; B906. Dalby had reservations.

1. Cole Asks Blue Diamond to Send a “Maturity Notice” to Pressure Dalby.

The Company had an outstanding \$10 million loan from Blue Diamond. Op. 26; B12. The loan was poised to mature on October 6, 2023. Op. 26; B922. Blue Diamond’s Ball confirmed for Cole and the Company’s auditors that Blue Diamond would “work out an extension” with Gabb. Op. 26 & n.121; B905; B186.

But on September 20, 2023, Ball wrote internally at Blue Diamond that Gabb management—i.e., Cole—wanted to discuss “strategies ... to deal with the problematic founder Stephen Dalby.” Op. 26-27; B912. Ball explained that Gabb “[m]ight have us get more aggressive on our loan for the sake of getting Dalby to play ball[.]” Op. 27; B912.

Two days later, Ball ran a draft “maturity notice” letter by the Blue Diamond team, explaining, “we are trying to help apply some pressure to Stephen Dalby.” Op. 27; B914. Ball told his colleagues that “I’ll shoot it to [G]reg [Cole] for his agreement before putting it on official letterhead.” Op. 27 & n.126.

Ball shared the draft “maturity notice” with Cole, who sent it to Kastner and Clayton. Op. 27; B916.

On Monday, October 2, 2023, Randle circulated Blue Diamond’s “maturity notice” to the full Board. Op. 28. Randle wrote that “[t]he loan matures this Friday” and requested an in-person Board meeting on Thursday. *Id.*; B922. Randle wrote that “because [the FFA] has not been finalized – Blue Diamond will not extend our debt.” Op. 28; B922.

Earlier that day, Ball warned his team that Dalby or Jana might call. Op. 28. Cole suggested that Blue Diamond ignore them. *Id.*; B921. Ball explained that Gabb management was prepared for the loan to go into default unless Dalby signed the FFA. Op. 28; B921.

Under pressure and seeking to avoid a default, Dalby accepted the demanded terms. Op. 29; B147.

2. The Parties Sign the FFA.

On October 5, 2023, Dalby, AIM, Sandlot, and Gabb entered into the FFA. Op. 29; B12; B924.

Under the FFA, Spencer Tall replaced Jana as a Common Director and was appointed Chairman, and the Board’s composition otherwise remained the same. Op. 29; B924 § 1. The parties also agreed that for the FFA’s term, no director could be removed without unanimous approval of the other four. B925 § 1(b). The FFA would terminate when Gabb raised a Series B or, otherwise, March 31, 2024. B926 § 4.

E. The Telispire LSA

On November 1, 2023, Gabb entered an LSA with Telispire. Op. 30; B13; B930. The Telispire LSA provided Gabb a \$5 million revolving line of credit (B13; B930 § 2.1) and a right to “request” a \$3 million increase (B13; B930-31 § 2.2). Telispire had “sole and absolute discretion” whether to approve any increase. B931 § 2.2.

The Telespire LSA also limited Gabb’s ability to take on new debt (B13; B939 § 6.1) and restricted changing its senior management, “Board structure,” or ownership without Telispire’s approval (B14; B940 § 6.9).

F. The Attempted Series B

Gabb engaged Moelis to target potential bidders. Op. 31; B13.

During this period, a dispute emerged over Cole, Mendez and Randle’s claim that they granted themselves millions of dollars of options during the prior litigation, despite a court-ordered SQO preventing options grants. Op. 8, 14-15, 31; B135-37. Tall sided with Cole, Mendez and Randle, leading to tension with Dalby. Op. 31; B962.

The Company did not secure a Series B financing. B13. The FFA expired on March 31, 2024. Op. 34; B13.

G. Dalby Replaces Tall with Jana

On May 3, 2024, Dalby removed Tall and re-appointed Jana. Op. 34; B3, B14; B965.

Randle quickly wrote Company counsel, Foley, “don’t acknowledge it” and asked about “our rights so we know what action/steps to take.” B969.

On May 6, 2024, Foley’s Jeff Bowman responded that “it would be difficult to successfully argue that Tall has not been removed.” B968.

On May 7, 2024, Tall texted Randle: “Kastner called me tonight. Suggested that [Telispire LSA] has a requirement that no changes in management or board structure can take place without their approval. *That might be the ultimate leverage.*” B972 (emphasis added).

Randle responded: “Isn’t board structure different than board members?” Op. 35-36; B972-73.

That day, Bowman emailed Neal Bakare, a Foley attorney specializing in debt financing transactions who was involved in negotiating the Telispire agreement. Op. 36; B1962; B258. Bowman asked whether Tall’s removal and Jana’s appointment “would violate Section 6.9”. Op. 36; B1962-63; B258.

Bakare replied that Section 6.9 was “not a hot topic in the negotiation” and he “d[idn’t] recall specifically discussing this provision with [Telespire’s counsel].” Op. 36; B1963. Bakare wrote “I think it would violate 6.9 as a *technical matter* only under the most strained reading. It says ‘structure’ not ‘membership.’ And ... these things are usually about changes of control[.]” B1963. Bakare and Clayton had previously decided the “Dalby move” was not an “EOD”. B975.

Nevertheless, Bowman saw “potential strategic advantage in *taking the position in conversations with Mr. Dalby* that his actions constitute, or could constitute, an event of default.” B975-76 (emphasis added).

Kastner did exactly that. Contradicting Bakere, Kastner wrote Dalby’s attorney: “What’s concerning is that Telispire stated in the extension process that their intent included a change in the composition of the board” Op. 37 & n.189; B978.

On June 6 and 10, 2024, Randle “consult[ed] with Telispire on what Section 6.9 ... requires.” Op. 38; B1008. As the trial court observed, “[i]t is unclear ... whether he pushed Telispire to declare a default to put pressure on Dalby as Cole had with Blue Diamond just seven months before.” Op. 38. Following Randle’s call, Telispire said it would not lend Gabb additional funds unless Gabb agreed, among other things, to “[r]einstate the board as it was” with Tall. Op. 38; B14-15. Dalby declined.

H. C Spire LOI

On May 24, 2024, Moelis emailed Randle and Cole a letter of intent from C Spire valuing Gabb at approximately “\$116MM to \$150MM.” B16; B984. That day, Randle forwarded the LOI to Tall, Kastner, and Mendez. B983. Randle also texted Tall, Kastner, Mendez, and Cole stating: “We have a term sheet from CSpire” and setting up a call. B982. The Dalbys were excluded.

Defendants and management were not interested. Cole told Ball that C Spire’s proposal was a “silly number” and that an offer “needs to be double or nothing to talk about.” B189-90; A0101; *see also* B190 (Cole valued Gabb at \$275m, or \$225m+ for a minority stake).

I. Project Exitus

On July 8, 2024, Bowman sent Randle, Cole, and Clayton a document titled “Project Exitus,” a “Strategic Plan & Roadmap” of “potential actions ... to help mitigate and/or resolve certain long-standing disputes between the Company and ... Dalby.” Op. 39; B1090-92. The “potential actions” included: (1) establishing a board “Executive Committee” and (2) removing Dalby from the Board for cause by stockholder vote. Op. 39; B1092-97.

The roadmap commented that Gabb’s Delaware counsel was “looking into whether continuing to dispute Jana’s purposed [sic] appointment is a viable option, *even if only to distract Stephen* while other aspects of the Plan are implemented.” Op. 40; B1094 (emphasis added).

Foley billed all work relating to Project Exitus and Dalby’s attempted removal—and, later, AIM’s note conversion—to Gabb. Op. 40 & n.200; B25-25.

1. The July 2, 2024 Board Meeting

Approximately two weeks earlier, Foley contacted Delaware Corporate Counsel about serving as Gabb’s Delaware counsel. Op. 40-41; B17-18. Foley

asked DCC about “[h]elping the company prepare and run a stockholder consent solicitation process for the purposes of removing a director.” Op. 40; B1010.

Foley emailed DCC objectives that included: “[r]emov[ing] Dalby pursuant to Section 1.4(a) of the Voting Agreement” and “[c]onduct[ing] a raise from insiders to dilute Dalby.” Op. 41; B1013.

On July 1, 2024, Randle texted Mendez, Kastner, and then-director Zolman—but not the Dalbys—to ask for availability for an “emergency board meeting” the next day. Op. 41; B1061; B233.

Randle then emailed the full Board a notice of a July 2, 2024 Board meeting “regarding our current debt position.” B1059. Randle did not mention establishing an executive committee. B233-34.

a. The Secret Executive Committee

On July 2, 2024, the Board met virtually. B1106. The Dalbys were on a flight (B148; B1086) and could only join for approximately 12 minutes before a flight attendant required them to disconnect. Op. 43-44; B18. Kastner, Mendez, and Zolman established an “Executive Committee” of the Board after the Dalbys left the meeting. Op. 44; B1108.

No one told the Dalbys. Op. 44; B112; B137; B234; B253; B257-58. “That was deliberate.” Op. 44. As Kastner acknowledged, the Executive Committee was “knowingly conceal[ed]” from the Dalbys. B137, B140.

b. The Original AIM Note

After the Dalbys disconnected, Kastner, Mendez, and Zolman voted to approve \$4 million in AIM and Sandlot convertible notes, at a 22% interest rate. Op. 45; B15; B1332-34. The notes were characterized as “bridge financing” and a “bridge loan.” B1312.

Later that day, Kastner texted Cole: “It doesn’t do us any good to have the conversion component of the debt deal. We would simply [be] diluting ourselves for the most part.” Op. 45; B1063. “What Kastner was concerned about was the Settlement Agreement’s No Additional Dilution provision.” Op. 45. Kastner texted Cole: “[W]e cannot come in with a non-[Series b] round, or we just dilute ourselves, per the settlement agreement.” Op. 45 n.230; B1063.

The next day, Kastner, Mendez, and Zolman—acting as the Executive Committee—voted to remove the conversion feature and approved a \$1.5 million AIM promissory note (the “AIM Note”) instead. Op. 45; B15; B1068-70.

c. The Revised AIM Note

On July 26, 2024, Telispire wrote to Gabb that the AIM Note violated LSA Section 6.1 and demanded that it be subordinated to Telispire’s loan. Op. 46; B15; A0134-37. On July 29, 2024, Randle circulated Telispire’s letter and asked the Board to approve a subordinated version of the note. Op. 46; B15; B1118. This was the first time the Dalbys learned of the AIM Note. B149, B179.

Randle’s email emphasized urgency, stating “**Their deadline is this Wednesday, 7/31.**” B1118. Behind the scenes, Bowman advised that “[n]otwithstanding Telispire’s arbitrary 7/31 deadline ... Gabb has a cure period of 30 days [W]e don’t necessarily need to feel unduly rushed.” B1156. No one told the Dalbys. B1156; B148-49.

i. AIM and Gabb’s counsel scheme to avoid “hit[ting] Stephen’s counsel’s radar.”

On July 30, 2024, Kastner wrote Randle, Cole, Mendez, Foley, and Clayton that “AIM will be recusing.” B1161. Bowman responded: “[I]f you recuse yourself, then we cannot use an action by unanimous written consent [requiring] approval at a board meeting, *which has some challenges associated with it.*” B1160 (emphasis added).

AIM’s counsel requested that the consent include a waiver. B1170. Bowman pushed back, writing that an explicit waiver was “outside of the ordinary course” and “*will surely hit Stephen’s counsel’s radar and lead to questions.*” B1169 (emphasis added).

Bowman proposed including generic language that the Revised AIM Note “is ‘just, equitable, and entirely fair’ and “in the best interests of the Company and its stockholders’” to create “an estoppel element with respect to Stephen specifically” and “address[] the risks that we discussed on our call.” B1169. AIM agreed to Bowman’s approach. B1167, B1174. The trick worked.

ii. Clayton recognizes the Revised AIM Note is not in Gabb’s best interest.

Internally, Clayton expressed doubts: “Wondering if a potential alternative is for AIM to sign the note without the conversion. ... that seems far better for Gabb than what AIM and Dalby are discussing.” B1120. Cole nixed the idea. B1155.

iii. Misled, the Dalbys approve the Revised AIM Note.

On July 31, 2024, after discussion with Murphy and Kastner, the Dalbys agreed to approve the revised AIM Note, stating “[w]e do not agree that the company should go into default.” Op. 46; B15; B1118.

The revised AIM Note provided two conversion options: Section 2(a) and Section 2(b). Op. 47; A0112. Section 2(a) allows AIM Ventura to elect to convert in its “sole discretion” after thirty days. Op. 47. Upon conversion, AIM Ventura can elect to purchase up to \$1 million worth of additional shares, and Gabb is required to offer the AIM Co-Invest Entities the option to convert as well. A0112. Section 2(a) further provides that, if the AIM Co-Invest Entities convert, “all other holders of the debt may convert at the same terms.” A0112; Op. 47. Section 2(b) allows AIM to convert following a Series B round of financing. Op. 47; A0112.

Section 2(c) lays out the conversion procedure. Op. 47; A0112-13. If AIM elects a Section 2(a) conversion, the Company “shall not be required to issue or deliver the capital stock” until “the Company has taken all corporate action required

to be taken by the Board and the Company’s stockholders, including, without limitation, the filing of an amended certificate of incorporation ... authorizing the Optional Conversion Preferred Stock.” Op. 47-48; A0112-13. If Gabb does not issue the stock within fifteen days, a “Default Interest Trigger Event” results, Op. 48; A0112-13, and the interest rate of the AIM Note increases from 22% per annum to 30% per annum. Op. 48; A0111.

At trial, Murphy testified that he wanted Dalby to understand the two conversion options, and explained how the conversion would work in detail, including that conversion under Section 2(a) was a “more dilutive path, triggering that Series B by itself.” Op. 48-49 & n.249; B218. As the trial court found, “[n]othing in the record supports Murphy’s testimony.” Op. 49.

2. Gabb Management Green Lights Removing Dalby for Cause.

On July 8, 2024, Foley emailed DCC: “[w]e have the green light from Gabb to proceed with the stockholder consent solicitation to remove [Dalby] for cause.” Op. 49; B1099.

Later, DCC emailed Foley a draft CIS. Op. 50; B19; B1181. DCC stated that “[a] stockholder of the company, as opposed to the company, should circulate the information statement and solicit consents from other stockholders. The company should be careful in its discussions with the soliciting stockholder.” B1181.

On August 16, 2024, Foley sent Gabb’s Delaware litigation counsel, Landis, Rath & Cobb LLP, “Project Exitus Important Documents.” Op. 50; B19; B1184.

In late September, Clayton presented “Legal Strategy” slides to the Executive Committee. Op. 51; B19; B1245-47; B115. The slides listed three strategy questions: (1) “Do we tell Dalby that we’re doing stockholder consent in x days to push secondary?” (2) “AIM Ventura note diluting Dalby?”, and (3) “Who else may be willing to exercise options?” B1247.

3. Management Receives a Proposal from Celtic Bank for a \$20M Line of Credit.

Around October 23, 2024, Celtic Bank proposed a \$20 million loan to Gabb. B1263; B1264. Celtic Bank “want[ed] Stephen Dalby to sign a personal guarantee.” B17; B1264.

4. After Waiting a Month, Randle Demands Immediate Approval of the Celtic Bank Loan.

The Dalbys first learned of Celtic Bank’s proposal on November 21, 2024, when Randle abruptly demanded that the Board approve the \$20m loan by unanimous written consent by noon Monday, November 25. B1356.

Randle threatened: “Without immediate cash, Gabb may be forced to consider other options, including bankruptcy.” B1356.

The Dalbys were surprised. B151-52. Days earlier, after discussion with Cole, Ball wrote internally at Blue Diamond that “\$2.5M gets [Gabb] through

December and into the slower Q1 so the \$20M Celtic line not mandatory for survival.” B1297; B195.

And the personal guarantee was a meaningful issue. B151-52. Mendez testified bluntly that he would not sign a personal guarantee under similar circumstances. B751.

5. Clayton Notes Bankruptcy Would Not “Get Rid of Dalby”.

Between November and December, Clayton took notes on a potential Chapter 11 reorganization. Op. 70; B813-14. She wrote that bankruptcy “doesn’t get rid of Dalby” since it “would be unusual for [a] court to interfere [with a] voting agreement.” Op. 70; B813.

6. Randle and Cole: “[P]ut the burden on [Dalby] to legally fight his way back. He won’t have the money to do it.”

In late November, Cole texted Randle: “the plan I like the best is to have us all convert ... so we get Dalby below 25%. ... We will also have to remove Dalby from the board” B1375. Randle responded: “*we need him out and then put the burden on him to legally fight his way back. He won’t have the money to do it.*” *Id.* (emphasis added). Cole’s reaction: “Yeah, hopefully he will just sell at that point. It will be at half the ownership % that he used to have and with [a] bunch of legal bills.” *Id.*

7. The Stockholder Solicitation

On November 7, 2024, Kastner emailed Dalby to provide “formal notice that Gabb ... and its principal stockholders are initiating the process to remove you from the Company’s Board ... for cause.” Op. 55; B20; B1272.

On November 13, Dalby replied. Op. 56; B21; B1288. Dalby wrote that “Gabb’s business and affairs are managed by its Board of Directors,” and “the Board can **only** take action (1) at a Board meeting or (2) if all Board members consent in writing” Op. 56; B1288. Dalby requested “any good-faith basis for asserting that Gabb has been validly authorized to send any solicitation to stockholders in an effort to remove” him. B1289.

When Kastner replied, he did not mention the Executive Committee. B1287.

On November 17, Dalby responded, writing:

I understand from this correspondence that you now agree that Gabb is not soliciting my removal, and you will not be representing that Gabb is soliciting my removal or that Gabb has a view on the matter—and will not be using Gabb resources (including Company counsel) to do so. If that is not right, please let me know **immediately**.

Op. 57; B1286. No one responded or otherwise informed Dalby that Company resources had been and would continue to be used for his removal. Op. 57; B130-31, B140; B730-32.

8. Management Asks Blue Diamond to be “Nominal Sender.”

On November 14, 2024, DCC emailed Gabb management, Foley, and LRC: “We will need to confirm that Blue Diamond will be the nominal sender of the solicitation statement.” Op. 58; B118.

Five days later, after speaking with Cole (Op. 58 & n.307; B194-95) Ball wrote internally at Blue Diamond that AIM and Sandlot “are looking to send out a shareholder consent/agreement request to remove Stephen Dalby from the board.” B1296. Ball explained, “[r]eally just they’ll say Blue Diamond is who is initiating this action instead of AIM or Sandlot.” *Id.*

Ball also described the plan to use convertible notes: “The intent ... is to dilute Dalby sufficiently to be able to remove him from the board and render him as just another common stockholder [sic] he’d be diluted to low 20%’s.” Op. 59; B1296.

The next week, on December 9, 2024, DCC emailed Gabb management, Foley, and LRC “clean and marked copies of the information statement” listing “Blue Diamond” as the soliciting stockholder. Op. 60; B1392, B1394; B1412. Clayton prepared a draft email for Blue Diamond to send to Dalby. Op. 60; B1382; B1388; B1391; B1433.

The next day, Ball sent the email to Dalby. Op. 61; B1435. The email stated: “Per Mr. Kastner’s email dated November 7, 2024 [Blue Diamond] is initiating your removal for cause.” Op. 61; B1435.

Gabb’s counsel and management continued work on the CIS. Op. 61; B1464. DCC recommended including a Blue Diamond contact as “better from an optics and litigation perspective.” Op. 61-62; B1464; *see also* B1440.

9. Blue Diamond’s Proposed Quid Pro Quo

After meeting, Ball emailed the Dalbys, the Preferred Directors, and management a video and memo summarizing the meeting and offering a “Proposal.” Op. 66. The Proposal provided in relevant part:

We would like Blue Diamond Capital to be named as a board member (replacing Jana) for as long as our debt is outstanding. ... You (Stephen) would remain on the board and I would invite Jana to continue attending board meetings.

Op. 66; B1493 (emphasis added); B21. Ball made this proposal knowing all the supposed reasons for Dalby’s removal. Op. 67; B197-98; B1434.

That day, Foley sent Clayton a draft “amended and restated [V]oting [A]greement” putting Ball on the Board. Op. 67; B1495-97.

Three days later, Ball texted Cole, Randle, and Clayton: “Dalby says he’ll remove Jana and name somebody (not me but a qualified person) and remove his

ability to remove that person. Thoughts?” Op. 67; B1584. Cole responded: “We don’t like the idea.” *Id.*

On December 20, 2024, Ball emailed Dalby that Blue Diamond would proceed with the removal solicitation. Op. 68; B1589.

10. Dalby Temporarily Steps Down from the Board.

On December 20, impacted physically by stress, Dalby exercised his right under Section 1.4(e) of the Voting Agreement to temporarily step down from Gabb’s Board. B1585.

11. “Dropping all the bombs on him”

On December 22, 2024, Randle called a Board meeting for the next day to consider an inside Series B financing round. Op. 68; B1589.

On December 23, 2024, then-director Hammond resigned. A0231. Dalby appointed Jana’s brother, Jason Hawke. Op. 71; B7; A0244-45.¹

On December 24, 2024, Mendez texted Sandlot’s Baugh: “Dropping all the bombs on him on 12/26 ... [1] Converting ... [2] And initiating the [Series] B ... Putting Nate [Randle] in the [CEO Director] seat ... [3] And we’re suing him too ... Executing all 3 strategies ...” Op. 71-72; B1598; B255.

¹ AIM references Murphy’s “extreme issue” with Hawke. OB 14 & n.3. While AIM omits much (*see, e.g.*, A0786-789, A0826-829), given its ruling that Dalby’s removal was invalid, the trial court did not reach Hawke’s disputed removal. It is not at issue on appeal.

Mendez testified that “converting” meant the Note Conversion “at issue in this case[.]” B255. Mendez testified that the purpose of the Note Conversion is to protect the Preferred Stockholders (particularly AIM), and that it was part of the “3 strategies” because “it would dilute Mr. Dalby[.]” B255.

12. Hawke and Jana Question Gabb’s Expenses.

On December 24, 2024, Hawke emailed Cole and Randle about missing information and questioned high expenses including “33 Million of General and Admin.” B1678.

Hawke was not alone. In October 2024, a Moelis managing director emailed his colleagues: “Why did they increase opex by \$18m this year[?]” Op. 69; B1260. A Moelis VP responded: “August 2024E payroll was up 60%+ YoY. They have hired [a] bunch of people. ... *It’s very difficult to understand given the cash constraints*, but it has been a conscious choice on the company’s part.” *Id.* (emphasis added).

On January 21, 2025, Cole emailed the Board that Gabb had received an overdraft notice from its bank, and that “AIM has \$1 million ready to wire in once the conversion agreement is signed” and “[w]e desperately need this money.” B26; B1833. Jana responded that “the company would be receiving 2M today.” B1832. Cole acknowledged that \$2 million was coming but would be a day late because of a bank holiday. *Id.*

The next day, Jana’s and Hawke’s Gabb QuickBooks access was terminated—at Cole’s direction. B212.

13. The Proposed AIM Note Conversion

On December 27, 2024, then-Preferred Director Murphy emailed Gabb counsel and others stating: “We are preparing to move forward with the conversion.” Op. 72; B1618.

Gabb’s Delaware counsel had reservations. As early as November, LRC commented: “I am not sure I understand how the conversion that dilutes Dalby does not violate the Settlement Agreement. I keep getting stuck on the phrase ‘no action will be taken that will have the effect of diluting Dalby’s rights as a shareholder.’” Op. 72; B1292; *see also* B1681; B1278.

On December 31, 2024, Bowman emailed Gabb management and counsel detailing steps for the conversion. Op. 72; B1683; B1686. Cole forwarded Bowman’s email to Murphy and Kastner, writing “fyi[.]” Op. 72-73; B1686.

The steps included converting the Revised AIM Note to Series B stock, amending the charter to create the new class of stock, and then declaring the Note Conversion the “Next Equity Financing” and “the Series B Financing.” B1684. This would be used to claim satisfaction of the first trigger for Dalby to lose the CEO Director seat under the Voting Agreement, *id.*, and to terminate Dalby’s anti-dilution protection under the Settlement Agreement. B897. Bowman explained that the

Executive Committee would then authorize the second trigger for Dalby to lose the CEO Director seat by briefly appointing a new CEO, writing that after Dalby's removal, the Board could simply reinstate Randle as CEO *and* give Randle the "CEO Director" seat. B1684; A0074 § 1.2(c).

Bowman modeled the conversion's dilutive effect on Dalby. Op. 74; B260; B1604 (noting conversion would dilute Dalby to 25.13% ownership and 31.09% voting rights); B1689 (revising calculation to 25.11% ownership and 28.94% voting rights). Cole forwarded Bowman's dilution model to Murphy, writing, "I'll stop by shortly to discuss[.]" Op. 74; B1615.

On January 3, 2025, AIM provided notice of its election to convert under Section 2(a). Op. 74-75; B1699. Foley—Gabb's counsel—"took the primary pen" in drafting the paperwork for AIM's Note Conversion, including the notice AIM sent to the Company. Op. 75; B262.

On January 8, 2025, Randle emailed to schedule a Board meeting "ASAP" as a "procedural" step to the Note Conversion. Op. 76; B1701. Randle wrote: "If we fail to convert AIMs note by January 18, there will be a default interest trigger event which raises the interest rate to 30%. This would be catastrophic" *Id.*

In fact, the cost of increasing the interest rate from 22% to 30% was only about \$10K per month.

14. Gabb Stockholder Vote on Removal

On January 14, 2025, Dalby exercised his right under Section 1.4(e) of the Voting Agreement to return to the Board. Op. 76; B1786-87. Later that day, DCC updated the CIS (B1788), and Foley distributed the CIS to Gabb's stockholders via DocuSign. Op. 76-77; B1807. The CIS stated that Blue Diamond was "solicit[ing] proxies in favor of the removal for cause of director Stephen Dalby" Op. 77; B1777.

On January 28, 2025, Clayton sent Ball a draft letter from Ball to stockholders saying that Dalby had been removed. Op. 79; B1842-43.

That day, Gabb informed stockholders that "a majority of the outstanding voting power of the capital stock have acted to remove Dalby for cause." B1839. The email attached Ball's letter. B1841.

15. Kastner and Mendez Vote to Approve the AIM Note Conversion.

Also on January 28, Randle emailed Dalby a letter asserting that Hawke was a "Disqualified Designee" under the Voting Agreement. Op. 79; B26; A0448-80.

Randle then emailed the Board proposing a meeting on January 30, 2025, to approve the Note Conversion. Op. 80; B26; B1926. Hawke and Jana advised they were not available at that time. B26; B1925.

On January 29, 2025, Murphy texted Craig Adams the "current plan" for Gabb: "Take over the board force cost cuts. Suspend all bonuses. Immediately approve another round of equity financing." A0482. Following a text redacted for

privilege, Murphy added: “The company will not be able to pay our legal fees so we’ll take what we want from the company too.” A0482.

Shortly before the January 30 Board meeting, Randle circulated a written consent, supposedly on behalf of Dalby, purporting to remove Hawke. Op. 81; B26-27; B1850, B1852. The move was timed to prevent Dalby from appointing a replacement director before the January 30 meeting. B1820.

The two Preferred Directors then went forward with the January 30 Board meeting. Op. 82; B1887. They took the position that there were only three directors on the Board (Kastner, Mendez, and Jana), Kastner and Mendez constituted a quorum, and thus their 2-0 vote to approve the Note Conversion was valid. B27.

16. Stockholders Express Anger Over the Note Conversion.

Multiple stockholders were upset about dilution from the Note Conversion. *See, e.g.*, B242; B717-20. Gabb’s stockholders did not approve amending the certificate of incorporation to authorize Series B Preferred Stock for the Note Conversion. Op. 82.

J. This Litigation

1. The Dalbys’ 225 Complaint

On February 10, 2025, the Dalbys filed their Verified Complaint. Count I sought a declaration that Dalby’s removal was invalid under the Voting Agreement and, therefore, the purported January 30, 2025 vote to approve the Note Conversion

lacked a quorum and was invalid. A0534-36 ¶¶ 111-19. Count II sought contractual fee-shifting. A0536-37 ¶¶ 120-22.

2. AIM’s Intervention

On February 14, 2025, AIM filed a Motion to Intervene and proposed complaint-in-intervention. A0573-84. AIM’s Motion to Intervene asserted that:

- AIM’s “claims and defenses have similar—if not identical—questions of law or fact in common with this action” (A0576-77);
- AIM has “a significant interest in the Board’s approval of the Optional Conversion ..., which is the key event underlying the Dalbys’ claims in this action” (A0579);
- AIM’s claims “involve the same transaction and contractual agreements among the parties” (A0579);
- “[a]ny determination regarding whether Mr. Dalby was a valid member of Gabb’s Board when it voted to authorize the Optional Conversion on January 30 will affect not only AIM’s contractual rights but also the value and size of their equity stake in Gabb” (A0581-82);
- AIM “has standing to intervene to determine whether Mr. Dalby’s removal from the Board was valid” (A0582).

The parties agreed to AIM’s intervention, which the Court so-ordered. A0585-89. The intervention order provided that “AIM may participate in all discovery, present argument, and briefing in opposition to the Dalbys’ Complaint, and litigate at the trial in opposition to the Dalbys’ Complaint.” A0586 ¶ 1. The order further provided for AIM’s complaint-in-intervention to be litigated “on the

same expedited schedule as the Dalbys' Section 225 Complaint" and "tried together in a single combined trial on the merits." A0586-87 ¶ 2.

The intervention order further provided that "Plaintiffs Stephen Dalby and Jana Dalby shall file a responsive pleading to AIM's Intervention Complaint, and may participate in all discovery, present argument and briefing in opposition to AIM's Intervention Complaint, and litigate at the trial in opposition to AIM's Intervention Complaint." A0587 ¶ 3.

On February 20, 2025, AIM filed its Verified Complaint-in-Intervention. A0590-612. AIM sought specific performance of the Note Conversion and associated declaratory relief.

Gabb filed a Statement of No Position regarding AIM's Complaint-in-Intervention. A0647-49.

The Dalbys filed a responsive pleading. A0613-46. The Dalbys alleged that conversion would violate Dalby's anti-dilution rights under the Settlement Agreement. A0620-38 ¶¶ 18, 39, 65. The Dalbys also asserted a counterclaim for a declaratory judgment that any conversion must "account for the contractual non-dilution obligation set forth in the Settlement Agreement." A0645 ¶ 8. The Dalbys' responsive pleading requested an award of "reasonable attorneys' fees and other costs and expenses incurred in connection with this action." A0646.

3. Trial and The Post-Trial Opinion

Trial was held May 8-9, 2025. The trial record included 197 stipulations of fact, 900+ exhibits, thirteen depositions, and nine trial witnesses. Op. 4-5.

AIM joined Defendants' attempted defense of Dalby's "for cause" removal. A0842; *see also* B56 (similar).

At post-trial argument, the trial court stated its "strong inclination ... that, based on the record presented to me, this matter does not satisfy the standard for for-cause removal" (B404) and that, as for the Note Conversion, "[i]t would seem very difficult to say ... that this was a bona fide financing for the primary purpose of raising capital." B410. The trial court raised the possibility of "enforcing folks' contracts [b]ut all the contracts. So there's an issuance of the shares, but Mr. Dalby can't be diluted." B412.

Following post-trial argument, AIM issued a "notice of conditional revocation" stating that AIM "hereby rescinds" the Note Conversion "in the event the final ruling in the Pending Litigation ... is contrary in any way to [AIM's] interpretation." B707.

On August 29, 2025, the trial court issued its Memorandum Opinion. The court held that "Dalby's for cause removal was invalid" (Op. 4), and, therefore, "the January 30, 2025 Board meeting lacked a quorum" (*id.* at 91 n.492). No party has challenged the ruling that the removal was invalid.

The trial court also denied AIM’s request for specific performance (Op. 4), holding that “the AIM Note conversion reflects the culmination of a long-running effort by non-neutral management, working with AIM, *to vitiate Dalby’s bargained-for rights under the Settlement Agreement and Amended and Restated Voting Agreement* and thereby ‘get rid’ of the Company’s founder and controller.” Op. 96-97 (emphasis added). The court further held:

In the Settlement Agreement and the Amended and Restated Voting Agreement, the parties agreed that Dalby would continue to enjoy certain rights until the Company’s ‘next’ ‘bona fide’ ‘financing for the primary purpose of raising capital.’ *The record unequivocally demonstrates that the AIM Note conversion is anything but.* Rather, the conversion’s primary purpose was to extinguish the rights created by the very agreements that impose this ‘primary purpose’ test.

Id. (emphasis added).

4. AIM’s Requested Stay Pending Appeal

On September 17, 2025, while the fee petition remained pending, AIM filed a premature Notice of Appeal. B637. On September 19, AIM moved for a stay pending appeal of the Court’s denial of specific performance, and an injunction preventing Gabb from repaying the AIM Note plus interest. B641. The Court of Chancery denied AIM’s “last-minute request for injunctive relief to prevent payment of the AIM Note.” B679.

5. The Dalbys' Fee Petition

Section 7.17 of the Voting Agreement provides: “If any party to this Agreement seeks to enforce its rights under this Agreement by legal proceedings, the non-prevailing party shall pay all costs and expenses incurred by the prevailing party, including, without limitation, all reasonable attorneys’ fees.” A0086. Paragraph 24 of the Settlement Agreement provides: “The Parties agree that any and all disputes arising from the interpretation or enforcement of the Agreement shall entitle the prevailing party, as determined by a court of competent jurisdiction, to an award of attorneys’ fees and costs associated with any such action.” B900. Dalby and AIM are parties to both agreements.²

On September 16, 2025, the Dalbys filed a petition for contractual fee-shifting. A0897-911; B560-636. The Dalbys submitted their engagement letter, which provides that RAM’s “compensation ... shall be contingent on prevailing in the Section 225 Litigation”—defined as “successfully obtaining a declaration or similar relief that Stephen Dalby’s purported removal as a director of Gabb Wireless, Inc. ‘for cause’ was invalid.” B566-67. RAM thus risked receiving nothing. But if the Dalbys prevailed, RAM would be paid its “regular hourly fees times a contingency multiplier of 2.5” plus reimbursement of expenses. B567-68.

² Specifically, AIM Ventura Capital Fund, LLC and AIM Ventura Co-Invest I, LLC are parties to the Voting Agreement, and AIM Ventura Capital Fund, LLC is party to the Settlement Agreement.

The Dalbys also provided RAM's detailed time records. No opposing party submitted time records or disclosed the amount billed.

On November 6, 2025, following argument, the trial court provided its inclinations and analysis, and solicited counsel reactions. Fee Ruling 59-80. The court held that the Dalbys prevailed and the fees and expenses requested were reasonable. Fee Ruling 67-75.

The Court of Chancery then issued its Order granting the Dalbys' fee petition, stating that "the Court's remarks at today's hearing will stand as its ruling," and ordering AIM Ventura Capital Fund, LLC and AIM Ventura Co-Invest I, LLC to pay \$10,487,304.25 in fees, costs, and expenses. B710.

On November 24, 2025, AIM filed an amended notice of appeal. Dkt. 13.

ARGUMENT

I. THE TRIAL COURT’S DENIAL OF SPECIFIC PERFORMANCE WAS NOT AN ABUSE OF DISCRETION.

A. Question Presented

Whether the trial court abused its discretion in denying specific performance of the Note Conversion. (Preserved at A0886-95.)

B. Scope of Review

This Court “reviews the grant or denial of specific performance for abuse of discretion.” OB 22 (citing *Osborn ex rel. Osborn v. Kemp*, 991 A.2d 1153, 1158 (Del. 2010)).

C. Merits of Argument

1. The Court of Chancery Applied the Correct Standard.

The trial court correctly stated the elements of specific performance—including the requirement that “the balance of equities tips in favor of the party seeking specific performance.” Op. 95 (internal quotation marks and citation omitted). AIM cites the same elements. OB 22-24. AIM does not dispute that a party seeking specific performance “must prove by clear and convincing evidence that they are entitled to specific performance” (Op. 85), and that the court “will not order specific performance if the equities do not favor that outcome clearly and convincingly” (Op. 96).

“A party is never absolutely entitled to specific performance; the remedy is a matter of grace and not of right, and its appropriateness rests in the sound discretion of the court.” *W. Willow-Bay Ct., LLC v. Robino-Bay Ct. Plaza, LLC*, 2007 WL 3317551, at *13 (Del. Ch. Nov. 2, 2007), *aff’d*, 985 A.2d 391 (Del. 2009). Here, the Court of Chancery concluded that AIM “failed to show that the balance of the equities clearly and convincingly tips in AIM’s favor.” Op. 98

2. The Court of Chancery Did Not Abuse Its Discretion.

AIM argues that “the trial court abused its discretion in denying specific performance.” OB 24; *see also* OB 25, 33. AIM is wrong.

First, AIM argues that “the trial court should have evaluated whether the conversion would cause hardship to Gabb” rather than “considering Stephen’s interests.” OB 23-24.

But “hardship to Gabb” is not the only equity to be balanced. For example, in *26 Capital Acquisition Corp. v. Tiger Resort Asia Ltd.*, 309 A.3d 434 (Del. Ch. 2023), the court balanced other “equities” in denying specific performance, including the interests of stockholders and party misconduct. *Id.* at 473-74. The *26 Capital* court found plaintiff’s “inequitable conduct” weighed against granting specific performance. *Id.* at 471-73. Even AIM acknowledges that balancing the equities should include “the circumstances that led to Gabb’s breach.” OB 23. Here, the trial court’s 98-page decision evaluated those circumstances with care.

And AIM’s conception of “hardship to Gabb” is too narrow. Diluting common stockholders at a price far below what Cole deemed “silly” is indeed harm to Gabb. So is “vitiating” Gabb’s governance agreements. Even Clayton saw “sign[ing] the note without the conversion” as “far better for Gabb.” B1120.

As the trial court noted, AIM’s specific performance claim—which would require a charter amendment creating Series B preferred stock that Gabb stockholders had declined to approve—was “asking the Court to order specific performance of a stockholder vote” even though “AIM did not cite a single case to support such an order.” Op. 96.

Second, AIM claims the trial court “eschew[ed] a review of the circumstances leading to Gabb’s breach.” OB 25. It is AIM that “eschews” reviewing the circumstances. For example, AIM’s brief omits Cole asking Blue Diamond to send a “maturity notice” against Gabb, Project Exitus, the “knowingly concealed” Executive Committee, and Gabb and AIM counsel strategizing to avoid “hit[ting] Stephen’s counsel’s radar.” As the trial court found: “conflicts, and furtive acts, abound.” Op. 96. AIM ignores these important facts.

Third, AIM asserts that the denial of specific performance was “premised on several erroneous factual determinations.” OB 27. But those determinations “are subject to the deferential ‘clearly erroneous’ standard of review”, which deference is “enhanced” when “based on determinations regarding the credibility of

witnesses.” *CDX Hldgs., Inc. v. Fox*, 141 A.3d 1037, 1041 (Del. 2016) (TABLE) (internal quotation marks omitted). The factual determinations that AIM challenges were supported by evidence, and certainly not “clearly erroneous”.

AIM “worked with” Gabb’s management. AIM asserts that AIM “operated independent of management.” OB 27-28. But the trial court found that “nothing in the record other than Murphy’s self-serving testimony supports such a conclusion”; “AIM’s Preferred Director designee was tuned into the plan since September 2024”; and “Cole ... was a central figure and, being an AIM insider, kept Murphy and Kastner apprised.” Op. 97. These factual findings were supported by the evidence. *See, e.g.*, Op. 97 n.510; B1951; B1686; B548-49

The Note Conversion sought to vitiate Dalby’s contractual rights. The trial court found that “the AIM Note conversion reflects the culmination of a long-running effort by non-neutral management, working with AIM, to vitiate Dalby’s bargained-for rights under the Settlement Agreement and Amended and Restated Voting Agreement and thereby ‘get rid’ of the Company’s founder and controller.” Op. 96-97. With little explanation, AIM asserts that the Note Conversion would not “vitate” Dalby’s rights and “would not ‘get rid’ of Stephen.” OB 29-30. But the record contains substantial evidence supporting the trial court’s factual finding—including Clayton’s handwritten notes using the phrase “get rid of Dalby.” Op. 70; B813. Indeed, AIM’s own post-trial brief asserted that the Note Conversion “would

free Gabb from the problematic governance structure embodied in a *voting agreement* and *settlement agreement* that entrenched Stephen in the ‘CEO Director’ seat.” A0840 (emphasis added).

The Note Conversion and attempted “take over.” The trial court found that “Gabb’s outside counsel came up with a plan” in which the Note Conversion “would ... be declared a Series B round of financing” and “AIM could then effectively take over the Company.” Op. 3-4. AIM challenges this finding. But Gabb’s outside counsel did draft such a plan. *See* B1683-85. The Note Conversion was designed to dilute Dalby from almost 49% of Gabb’s voting power to ~25%, and end his ability to appoint 3 of 5 board seats. B1683-84; B1689; B1616. And the day before the January 30 board vote on the Note Conversion, AIM’s Murphy summarized for his boss “the plan” to “[t]ake over the board.” Op. 82-83 (citing A0482). Using Murphy’s own words is not an abuse of discretion.

Dalby’s controller status. The trial court characterized the Note Conversion as the culmination of a “long-running effort” to “‘get rid’ of the Company’s founder and controller.” Op. 97. AIM asserts that “Stephen does not control Gabb” and “holds less than 50% of Gabb’s voting power.” OB 31. But Dalby has the right to designate 3 of 5 directors. A0074 §§ 1.2(c), (d). Dalby held “almost 49%” of Gabb’s shares. B108. Referring to Dalby as Gabb’s controller was not abuse of

discretion. *See Kahn v. Lynch Commc'n Sys., Inc.*, 638 A.2d 1110, 1114 (Del. 1994) (holder of 43.3% of company deemed controller).

The Note Conversion's primary purpose. In the Voting Agreement and Settlement Agreement, "the parties agreed that Dalby would continue to enjoy certain rights until the Company's 'next' 'bona fide' 'financing for the primary purpose of raising capital.'" Op. 97. The trial court found that "[t]he record unequivocally demonstrates that the AIM Note conversion is anything but" and that "the conversion's primary purpose was to extinguish the rights created by the very agreements that impose this 'primary purpose' test." Op. 97. AIM quibbles with this finding. OB 32-33. But the trial court found AIM's position supported only by "Murphy's self-serving testimony" and that "AIM presents a narrative that is at odds with the record." Op. 97-98.

AIM shows no abuse of discretion in the trial court's weighing of evidence and credibility determinations.

3. Remand to determine an alternate remedy is not warranted.

Citing no authority, AIM asks that "[s]hould this Court decide not to reverse, AIM Ventura requests that the Court remand for further proceedings to determine an appropriate remedy." OB 33.

No such remand is warranted. The only other relief AIM sought was Count II. Though labeled "declaratory judgment," Count II is another attempt at specific

performance, seeking a “judicial declaration” that “the Company must proceed with giving effect to AIM Ventura’s election for an Optional Conversion ... without a choice whether to proceed with the conversion.” A0611 ¶ 81. AIM did not seek damages. AIM even unsuccessfully moved to *prevent* Gabb from repaying the AIM Note plus interest. B641; B677.

In any event, remand would not make sense given AIM’s August 11, 2025 “notice of conditional revocation” advising that AIM “hereby rescinds” the Note Conversion “in the event the final ruling in the Pending Litigation ... is contrary in any way to [AIM’s] interpretation.” B707. Thus, “[s]hould this Court decide not to reverse,” OB33, AIM has rescinded the Note Conversion, but still has its Note plus 30% interest.

II. THE TRIAL COURT’S FEE RULING WAS NOT AN ABUSE OF DISCRETION.

A. Question Presented

Whether the trial court abused its discretion in granting the Dalbys’ fee petition. (Preserved at A0915-924, except the personal jurisdiction objection.)

B. Scope of Review

“A trial court’s award of attorneys’ fees is reviewed for abuse of discretion.” OB 34 (citing *Energy Tr., LP. v. Williams Cos., Inc.*, 2023 WL 6561767, at *20 (Del. Oct. 10, 2023)).

C. Merits of Argument

AIM contends that the Fee Ruling was “a clear abuse of discretion” suffering from “cascading flaws.” OB 34. AIM is incorrect.

First, AIM argues that “Appellants were not parties to the Section 225 Complaint” (OB 36) and “did not litigate the removal case” (OB 37). But “an intervener becomes a party to the litigation.” *Giammalvo v. Sunshine Min. Co.*, 644 A.2d 407, 408 (Del. 1994). The stipulated Order granting intervention provided that “AIM may participate in all discovery, present argument, and briefing in opposition to the Dalbys’ Complaint, and litigate at the trial in opposition to the Dalbys’ Complaint.” A0586 ¶ 1. AIM did exactly that. AIM received all discovery in the case, and participated in every deposition. AIM expressly “join[ed] in” Defendants’ defense of the removal case. A0842; B56.

Second, AIM argues that it at most appeared in the Section 225 action “in an *in rem* capacity.” OB 37. As an initial matter, AIM “waive[d], and agree[d] not to assert ... any claim that [it] is not subject personally to the jurisdiction of [the Delaware state courts]” in “any suit, action or other proceeding arising out of or based upon th[e Voting] Agreement.” A0085 § 7.16. AIM also did not raise an objection to personal jurisdiction in the trial court, waiving any such defense. *E.g.*, Ct. Ch. R. 12(h)(2).

AIM could not have validly objected to personal jurisdiction. AIM suggests that it should have been “treat[ed]” as appearing *in rem* “for purposes of the Section 225 Action” notwithstanding AIM’s concededly “*in personam* appearance in the Complaint-in-Intervention.” OB 37. That is not how personal jurisdiction works. As the Court of Chancery held, AIM “injected itself and injected non-*in rem* claims” into the litigation, and “that has consequences.” Fee Ruling 57.

Third, AIM argues that “the Dalbys are not party to the Complaint-in-Intervention, nor did they ‘prevail’ on the Complaint-in-Intervention (Appellants did).” OB 36; *see also* OB 37 (“[AIM] prevailed”). Not so. The parties agreed and the Court ordered that the Dalbys would “file a responsive pleading,” “participate in all discovery, present argument and briefing in opposition to AIM’s Intervention Complaint,” and “litigate at the trial in opposition to AIM’s Intervention Complaint.” A0587 ¶ 3.

And no one disputed that Gabb owes AIM \$1.5 million plus interest. AIM's claims were for specific performance and declaratory relief, which the Court rejected.

Indeed, AIM sought to *prevent* being repaid. *See, e.g.*, B35 (requesting declaration that Gabb “*cannot simply repay* the principal amount and interest owed under the AIM Note.” (emphasis added)). AIM reacted to the trial court's decision by issuing a “notice of conditional revocation.” B701. And AIM moved to stay the Implementing Order paragraphs regarding AIM's claims-in-intervention pending appeal. B641. Prevailing parties do not appeal and move to stay the very relief they supposedly “prevailed” on.

Fourth, AIM asserts that the Voting Agreement's contractual fee-shifting provision should not apply because “neither the Section 225 Complaint nor the Complaint-in-Intervention brought claims, or sought relief, under the Voting Agreement.” OB 35-36. In fact, both agreements were at issue in the litigation, which stopped a “long-running effort by non-neutral management, working with AIM, to vitiate Dalby's bargained-for rights under the Settlement Agreement and Amended and Restated Voting Agreement.” Op. 96-97. As discussed above (p. 40-41), AIM's attempt to quibble with this factual finding does not establish abuse of discretion.

Fifth, AIM argues that a contingent fee arrangement is not “reasonable or customary for a Section 225 proceeding.” OB 39. But AIM cites no authority holding that contingent arrangements are impermissible in Section 225 actions—let alone one combined with a plenary suit for specific performance designed to “vitate ... bargained-for rights under” the very contracts containing the fee-shifting provisions.

“[T]here is nothing inherently unreasonable in enforcing a contractual fee-shifting arrangement to cover a contingent fee award.” *S’holder Rep. Servs. LLC v. Shire US Hldgs., Inc.*, 2021 WL 1627166, at *2 (Del. Ch. Apr. 27, 2021), *aff’d*, 267 A.3d 370 (Del. 2021). As in *Shire*, “the contingent fee agreement allowed [the Dalbys] to retain skilled and experienced counsel despite a lack of resources to fund the litigation.” *Shire*, 2021 WL 1627166, at *2.

As Randle texted Cole: “*we need him out and then put the burden on him to legally fight his way back. He won’t have the money to do it.*” B1375 (emphasis added). Cole’s reaction: “Yeah, hopefully he will just sell at that point. It will be at half the ownership % that he used to have and with a bunch of legal bills.” *Id.* Contingent arrangements exist for circumstances like these.

Sixth, in challenging the trial court’s reasonableness analysis of RAM’s 2.5x contingent multiplier, AIM asserts that “[n]o party presented evidence to establish the value of Gabb at any point in time.” OB 41. But according to Cole—AIM’s

“co-founder,” “[p]ortfolio [m]anag[er]” and 50% owner of AIM Ventura Capital Management (Op. 6 & n.13)—Gabb was worth at least \$275 million in a control transaction and \$225 million for a minority stake. B189; A0101. This case halted a scheme to usurp Dalby’s control and dilute his nearly 50% stake to ~25% ownership. Op. 74 & n.404. The Court of Chancery did not abuse its discretion by considering this evidence.

Inconsistently with its claim that there was no record evidence of Gabb’s value, AIM later claims that “the notes of Brandon Ball” regarding Gabb’s value are “double-hearsay.” OB 42. AIM omits that (a) AIM did not timely object (B189); (b) Ball *testified* to the conversation with Cole about Gabb’s value in a deposition played at trial (B190; *see also* B40 (stipulation regarding admissibility of depositions); and Cole testified immediately after Ball’s video testimony and did not contradict Ball (B200-13).

AIM also leaves out that the trial court *did not* simply use Cole’s numbers. The court pressure-tested its analysis by conservatively assuming valuations *50% lower* “for the sake of being conservative.” *See* Fee Ruling 73-75. That was not “arbitrary and capricious” or “an abuse of discretion.”

Seventh, AIM calls the trial court’s consideration of a “control premium” component in its valuation cross-check a “fatal flaw” because “Stephen does not control Gabb.” OB 43. As discussed at p. 41-42 above, AIM ignores Dalby’s ~49%

shareholdings and right to designate 3 of 5 directors. And the trial court's analysis assumed a control premium of just "3 percent" even though, compared with Cole's view, that was "extraordinarily conservative." Fee Ruling 71.

Finally, AIM asserts that "Appellants are left to conclude that the trial court's Fee Award decision was intended to penalize Appellants for their intervention," and that Chancery lacks jurisdiction to assess "punitive damages" or "penalt[ies]." OB 34. Not so. The Court of Chancery held AIM to contractual fee-shifting provisions to which AIM agreed.

CONCLUSION

For the reasons set forth above, the Court should affirm. The Dalbys are also submitting a motion for contractual fee-shifting of their appellate attorneys' fees, costs and expenses.

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