



IN THE SUPREME COURT OF THE STATE OF DELAWARE

CAMDEN FOLEY and SAMUEL
BERTAIN,

Plaintiffs Below-Appellants,

v.

SESSION CORP., ESTHER LENOIR
RAMIREZ, and VINH PHO,

Defendants Below-Appellees.

No. 459, 2025

APPEAL FROM THE
COURT OF CHANCERY OF
THE STATE OF DELAWARE,
C.A. NO. 2023-0186-JTL

APPELLANTS' REPLY BRIEF

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ARGUMENT

I. WHETHER RESCISSION IS AN AVAILABLE REMEDY IN THIS ACTION IS A LEGAL ISSUE SUBJECT TO *DE NOVO* REVIEW.

While Defendants¹ argue at length over the correct standard of appellate review in this action, ultimately it appears they agree with Plaintiffs that “whether rescission is available as a remedy” presents a “purely legal question” that this Court reviews *de novo*. Appellees’ Answering Brief (“Ans. Br.”) at 28. This is entirely consistent with *In re Tesla, Inc. Derivative Litig.*, 2025 WL 3689114 (Del. Dec. 19, 2025), the Court’s most recent opinion on the matter, which holds that the Court “reviews *de novo* whether an equitable remedy exists or was applied using the correct standards.” *Id.* at *9. *Tesla*, in turn, follows *Schock v. Nash*, 732 A.2d 217 (Del. 1999), where the Court held: “[w]hether or not an equitable remedy exists or is applied using the correct standards is an issue of law and reviewed *de novo*.” *Id.* at 232. Both opinions recognize a two-step analysis where, if this Court finds the equitable remedy is available as a matter of law, it then reviews for abuse of discretion the trial court’s factual determinations and application of those facts to the correct legal standards. *See id.*; *Tesla*, 2025 WL 3689114, at *9.

Even Defendants acknowledge that this is precisely how the Court decided the appeal in *Tesla*, first considering whether rescission was available to the Court

¹ Plaintiffs adopt and incorporate herein the defined terms used in Appellants’ Opening Brief.

of Chancery as an equitable remedy and then holding the facts of that matter did not support its use as relief. *See* Ans. Br. at 27-28. The other opinions cited by Defendants do not address the primary issue – *i.e.*, whether the trial court had the legal authority to grant rescission – but recognize that the trial court has broad discretion to determine the *amount* of damages (*see SIGA Techs., Inc. v. PharmAthene, Inc.*, 132 A.3d 1108, 1130 (Del. 2015); *RBC Capital Markets, LLC v. Jervis*, 129 A.3d 816, 866 (Del. 2015)) and to choose the appropriate remedy *from those available to it* (*see Gotham Partners, L.P. v. Hallwood Realty Partners, L.P.*, 817 A.2d 160, 164 (Del. 2002); *Int’l Telecharge, Inc. v. Bomarko, Inc.*, 766 A.2d 437, 438-39 (Del. 2000)). These opinions do not contradict, but align with, the two-part analysis the Court used in *Schock* and *Tesla*.

In the first instance, therefore, this Court should consider *de novo* whether rescission, as a matter of law, is a proper remedy for the conversion of stock in a Delaware corporation through statutorily invalid transactions. Plaintiffs respectfully submit it is not.

II. THERE IS NO PRECEDENT IN DELAWARE FOR RESCINDING TRANSACTIONS THAT UNLAWFULLY CONVERT SHARES OF STOCK.

Existing Delaware case law is clear that the tort of conversion is remedied by an award equal to the “value of the property at the time of conversion, with interest.” *Tansey v. Trade Show News Network, Inc.*, 2001 WL 1526306, at *8 (Del. Ch. Nov. 27, 2001) (hereinafter, “*Tansey I*”) (quoting *Wyndham, Inc. v. Wilmington Trust Co.*, 59 A.2d 456, 459 (Del. Super. Ct. 1948)). Defendants do not and cannot argue otherwise.

Conspicuously, Defendants also do not identify any precedent where a Delaware court rescinded a statutorily invalid transaction that resulted in an unlawful conversion of stock. *See* Ans. Br. at 30.² Instead, as Plaintiffs explained in their Opening Brief (“Op. Br.”), Delaware courts have recognized for decades that shares of corporate stock are treated like any other converted property – *i.e.*, the tortfeasor is liable for damages equal to the value of shares at the time of conversion. *See* Op. Br. at 29 (citing *Tansey I*, 2001 WL 1526306, at *8; *Tansey v. Trade Show News Network, Inc.*, 2002 WL 31521092, at *1 (Del. Ch. Oct. 28, 2002) (hereinafter,

² Defendants’ quotation from *Tansey I* is misleading. *See* Ans. Br. at 29-30. While the Court of Chancery in *Tansey I* observed that “case law is replete with various approaches to dealing with situations where the value of the converted stock rose between the time of conversion and the time the plaintiff learned of conversion,” 2001 WL 1526306, at *8 n.31, none of the “approaches” included rescission or another equitable remedy. Instead, the *Tansey* court surveyed different methods for valuing stock when calculating damages for conversion. *See id.*

“*Tansey IP*”); *Layman v. F.F. Slocomb & Co.*, 76 A. 1094, 1095 (Del. Super. Ct. 1909); *Stewart v. Bright*, 6 Houst. 344, 347 (Del. Super. Ct. 1881), *reported at* 1881 WL 2561). While these trial court decisions are not binding precedent upon the Court as *stare decisis*, they nonetheless “are entitled to be given great weight and consideration and ought not to be disregarded unless, upon re-examination, they appear clearly to have been decided erroneously.” *Zeeb v. Atlas Powder Co.*, 87 A.2d 123, 126 (Del. 1952).³

Defendants offer no reason for the Court to depart from this precedent. Instead, Defendants only make the unremarkable observation that the Court of Chancery, as a court of equity, has broad discretion to grant such relief as the circumstances of a specific case merit. *See* Ans. Br. at 28-29, 31 (citing *Weinberger v. UOP, Inc.*, 457 A.2d 701, 714 (Del. 1983); *Wilmington Homes, Inc. v. Weiler*, 202 A.2d 576, 580 (Del. 1964); *Bullen v. Davies*, 209 A.2d 81, 85 (Del. 1965); *Guarantee Bank v. Magness Constr. Co.*, 462 A.2d 405, 409 (Del. 1983)). As *Schock* and *Tesla* make clear, however, this discretion extends only to the Court of Chancery’s choice among remedies that are *available* to it as a matter of law.

³ The Court has recognized a cause of action for conversion of stock through an unauthorized transaction, even if it has not opined on the appropriate relief for such a claim. *See Arnold v. Soc’y for Sav. Bancorp, Inc.*, 678 A.2d 533, 536 (Del. 1996); *Drug, Inc. v. Hunt*, 168 A. 87, 93 (Del. 1933).

By contrast, Plaintiffs have identified valid policy reasons why they should not be forced to hold stock in a corporation led by faithless fiduciaries who acted without authority to convert their shares. *See* Op. Br. at 31-32. Defendants do not address these issues at all, let alone articulate any countervailing grounds for granting rescission as an equitable remedy for their wrongdoing.

III. THE RECORD EVIDENCE DOES NOT JUSTIFY RESCISSION IN THIS ACTION.

Defendants do not question, because they cannot, that Plaintiffs needed only to give the Court of Chancery a “responsible estimate” of the damages to which they are entitled. *Beard Research, Inc. v. Kates*, 8 A.3d 573, 613 (Del. Ch.), *aff’d sub nom. ASDI, Inc. v. Beard Research, Inc.*, 11 A.3d 749 (Del. 2010). *See also Tansey II*, 2002 WL 31521092, at *1 (holding damages for conversion of stock not traded on a public market may be based on “a responsible estimate” of the shares’ value determined through “a good faith effort to craft a sensible remedy”). Instead, Defendants argue that the trial court correctly found the record evidence of Session’s value to be speculative and unreliable – even though the evidence consisted of Defendants’ own contemporaneous valuations.

Like the Court of Chancery’s holding, Defendants’ argument runs contrary to Delaware case law recognizing that “certain presumptions apply when evaluating harm and loss” – for example, “[w]here the injured party has proven the *fact* of damages ... less certainty is required of the proof establishing the *amount* of damages.” *SIGA Techs., Inc.*, 132 A.3d at 1131. As this Court has held, “the injured party need not establish the amount of damages with precise certainty ‘where the wrong has been proven and injury established.’” *Id.* (quoting *Del. Express Shuttle, Inc. v. Older*, 2002 WL 31458243, at *17 (Del. Ch. Oct. 23, 2002)).

Additionally, “Delaware courts place the burden of uncertainty where it belongs; so long as a plaintiff provides a reasonable method to calculate damages, the risk that such cannot be determined with mathematical certitude falls on the wrongdoer, not the wronged.” *Great Hill Equity Partners IV, LP v. SIG Growth Equity Fund I, LLLP*, 2020 WL 948513, at *20 (Del. Ch. Feb. 27, 2020). *See also Beard Research*, 8 A.3d 573 at 613 (“Public policy has led Delaware courts to show a general willingness to make a wrongdoer ‘bear the risk of uncertainty of a damages calculation where the calculation cannot be mathematically proven.’”) (quoting *Great Am. Opportunities, Inc. v. Cherrydale Fundraising, LLC*, 2010 WL 338219, at *23 (Del. Ch. Jan. 29, 2010)). The Court of Chancery’s analysis did not consider this case law, and Defendants do not question it.

If the Court of Chancery had properly balanced these interests, it should not have dismissed Defendants’ representations of value to investors as mere “puffery.” Through these communications, Defendants explicitly told potential investors that Session had a \$12 million pre-money valuation. *See* A1466-A1498. While Ramirez and Pho now claim that they “were transparent [to prospective investors] in providing all the Company’s financials and further articulating that [a] SAFE cap is not the same as ‘valuation’” (Ans. Br. at 40), the e-mails they cite say nothing about the \$12 million valuation. *See* B0051-B0062. Defendants also cannot easily brush aside as “emotional” (Ans. Br. at 38) their own opinions of value they expressed

shortly before terminating Plaintiffs' employment, which estimated a \$2 million valuation for Ramirez's Session stock and between \$4 million and \$4.5 million for Pho's shares. *See* A1588-A1589; A1612. These contemporaneous admissions offer compelling evidence of how Ramirez and Pho themselves valued the Company based on their personal knowledge and understanding of Session's finances and projected growth. *See* A1161-A1163 (Ramirez testifies her \$2 million estimate accurately reflected her opinion of value at the time); A1612 (Pho's \$4-4.5 million valuation was "based on 2021 gross revenue, and a rough estimate of where 2022 will end").

Ultimately, after the Court of Chancery found Defendants liable to Plaintiffs, it should have rejected Defendants' after-the-fact, litigation-driven attempts to disclaim their own representations of value as unreliable. Instead, the trial court's holding, contrary to Delaware law, gave Defendants the benefit of the doubt when, as wrongdoers, they were not entitled to it.

CONCLUSION

For the foregoing reasons, Plaintiffs respectfully request that this Court reverse the Court of Chancery's decision to grant rescission and award Plaintiffs total damages of \$4.8 million, which reasonably estimates the combined value of each Plaintiff's 20% share of Session's outstanding stock converted by Defendants.

Dated: March 16, 2026

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CERTIFICATE OF SERVICE

The undersigned hereby certifies that on March 16, 2026, true and correct copies of the attached document were served upon the following counsel of record via File & ServeXpress:

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