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IN THE SUPREME COURT OF THE STATE OF DELAWARE

MICHAEL PATTERSON, Defendant Below, Appellant v. LADY BENJAMIN PD CANNON, f/k/a BEN CANNON, Plaintiff Below, Appellee.	No: 505,2025 Court Below: Court of Chancery of the State of Delaware C.A. No. 2021-0171-PAF

APPELLEE LADY BENJAMIN PD CANNON'S ANSWERING BRIEF TO APPELLANT, MICHAEL PATTERSON'S OPENING BRIEF (CORRECTED AS TO PAGINATION ONLY)

OF COUNSEL:

M. CRIS ARMENTA, PC
M. Cris Armenta
(*pro hac vice*)
M. Cris Armenta PC
217 Clancy Way
Bozeman, MT 59718
(310) 488-2080
cris@crisarmenta.com

FAEGRE DRINKER BIDDLE & REATH LLP
Brett D. Fallon (#2480)
Patrick A. Jackson (#4976)
Jaclyn C. Marasco (#6477)
222 Delaware Avenue, Suite 1410
Wilmington, DE 19801
(302) 467-4200
brett.fallon@faegredrinker.com
patrick.jackson@faegredrinker.com
jaclyn.marasco@faegredrinker.com

Mark D. Taticchi (*pro hac vice*)
Elizabeth M. Casey (*pro hac vice*)
One Logan Square, Suite 2000
Philadelphia, PA 19103
(215) 988-2989
mark.taticchi@faegredrinker.com
elizabeth.casey@faegredrinker.com

Attorneys for Plaintiff Lady Benjamin PD Cannon

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NATURE OF PROCEEDINGS

This case arises from Michael Patterson's conversion of a warrant to obtain 1% of the common stock of Romeo Systems, Inc. ("Romeo Systems" or the "Company") outstanding at time of exercise (the "Warrant"), which was granted to Lady Benjamin Cannon in December 2015. When the Company went public in December 2020, the stock purchasable via that Warrant was worth approximately $27.4 million.

The Warrant arose from a payment dispute between Cannon and the Company, which was resolved by a settlement agreement whereby the Company agreed to provide Cannon a cash payment and "a document(s) or stock certificates guaranteeing [her] 1% 'full-ratchet' non-dil[u]table shares of" the Company. In August 2015, Patterson—then, the CEO and sole director of the Company—sent Cannon a draft warrant that did not provide for a 1% non-dilutable stake in the Company as required by the settlement agreement. Cannon's counsel revised it to, among other things, make it non-dilutable. She executed the revised Warrant and sent it to Patterson in December 2015, and he counter-signed it on behalf of the Company, apparently without reading it or providing it to the Company's counsel. He counter-signed it again in July 2018.

In October 2020, the Company announced a proposed SPAC merger, and Cannon (through her counsel) contacted the Company about her Warrant. The

Company's attorney responded that the Warrant had been transferred to Patterson in satisfaction of a $20,000 loan that Patterson had made to Cannon that she had not repaid. Cannon's counsel responded to note, among other things, (i) that the security agreement between Cannon and Patterson misdescribed the Warrant and thus was ineffective; and (ii) that Cannon was not notified of, and had not consented to, Patterson's acceptance of the Warrant in satisfaction of the debt, despite the clear requirements of UCC § 9-620. The Company never responded. The merger was consummated in December 2020. Cannon filed this lawsuit on February 26, 2021, seeking declaratory relief as to her rights in the Warrant and damages for Patterson's conversion of it. While the litigation has been pending, the Warrant expired.

Following a three-day trial and post-trial briefing, the Court of Chancery concluded that the Warrant was valid and binding as executed; that Patterson never had a security interest in it (due to the security agreement's misdescription of the collateral); and that Patterson was therefore liable for conversion based on his seizure of the Warrant and preclusion of Cannon's exercise of it. The court calculated Cannon's damages as $27.4 million, plus pre- and post-judgment interest, minus a credit to Patterson for repayment of the $20,000 loan (with interest).

Patterson now appeals.

SUMMARY OF ARGUMENT

1. Denied. The trial court properly rejected Patterson's argument that Cannon should be equitably estopped from challenging the sufficiency of the description of the collateral in the Pledge Agreement. Delaware law permits courts to use equity to supplement provisions of the UCC, not supplant them as Patterson demands. Even if that were not the case, the court below properly found that Patterson failed to demonstrate the propriety of estoppel by clear and convincing evidence.

2. Denied. The trial court correctly concluded that an objective third party trying to identify what collateral allegedly secured Cannon's obligation to Patterson would not read the description of the collateral in the Pledge Agreement (i.e., "a warrant to purchase Common Stock in [Romeo Systems] for one million shares") to mean the Warrant (which was for one percent of Romeo System's common stock at the time of exercise). The Vice Chancellor thus correctly concluded that the Pledge Agreement's collateral description did not adequately describe the Warrant, as required under Sections 9-108 and 9-203 of the UCC for a security interest to attach.

3. Denied. The trial court correctly found that, by executing the Warrant on behalf of Romeo Systems in December 2015, and then reaffirming it, Patterson (a former securities broker, fraud-protection software developer, and founder of numerous startups) manifested Romeo Systems' assent to be bound to the Warrant,

which clearly and unambiguously provided for 1% of Romeo Systems' outstanding shares at the time of exercise.

4. Denied. Patterson waived his argument that the Pledge Agreement's exculpation provision barred Cannon's conversion claim because he did not argue in his post-trial briefing that the exculpation provision applied in the event that a security interest did not attach to the Warrant. Regardless, Delaware law prohibits exculpating intentional torts like conversion as a matter of law.

5. Denied. Patterson has identified no facts or law that demonstrate that the court below abused its discretion in calculating Cannon's damages for conversion.

COUNTER-STATEMENT OF FACTS

Patterson's Opening Brief rests on a selective portrayal of the factual record—and, more importantly, one that departs materially from the Court of Chancery's findings. Given his failure to directly challenge any of those findings as unsupported by the evidence, Patterson's arguments should be viewed with due skepticism. Against that backdrop, Cannon offers this counter-statement of facts based on findings made by the Court of Chancery, with additional context from the trial record as appropriate.

A. Cannon's 2015 Payment Dispute and Settlement with Romeo Systems to Obtain a Guaranteed, Non-Dilutable 1% Equity Stake in the Company

Patterson founded Romeo Systems and incorporated it in Delaware in 2014. Post Trial Opinion ("Op.") 3. At its inception, the Company's focus was developing a portable kinetic energy device. *Id.* Patterson hired Cannon as a consultant in December 2014 to help develop the technology, which she did. Op. 4. Romeo Systems obtained a patent for the technology Cannon developed, and she was later named its Chief Technology Officer. Op. 4 n.9.

As a startup, the Company had no funding sources when it launched, so Patterson personally paid Cannon. Op. 5. In August 2015, Patterson ceased paying her. *Id.* On August 10, 2015, Cannon demanded payment of $31,206.97 and threatened legal action if Patterson did not pay. Op. 5-6. Patterson countered with an

offer to pay Cannon $13,000 and "grant [her] equity of 1%." Op. 6. Cannon responded: "Assuming a non-dilution guarantee, Done." *Id.* Cannon and the Company memorialized their agreement in a Full and Final Release (the "Release"), executed the same day. *Id.* The Release provides for:

> full release upon receipt of $13,000.00 on or before 8/21/15, and a document(s) or stock certificates guaranteeing [Cannon] 1%, "full ratchet" non-dilatable [sic], shares of Romeo Systems [], the owner of the [Romeo Systems] Patent that CANNON worked on while working with the company, to be issued to CANNON no later than Aug 31, 2015.

Id.

B. Patterson Sends Cannon a Draft Warrant; Cannon's Counsel Revises It

On August 30, 2015, Patterson sent Cannon a draft warrant ("Draft Warrant") prepared by counsel at Wilson Sonsini. Op. 6-7. Despite the language in the Release requiring that the 1% stake be non-dilutable, the Draft Warrant appeared to authorize purchase of only 1% *at issuance*. For example, in a boldface header on the right side of the first page, the Draft Warrant Stated: "Warrant to Purchase [Up to 1.0% of ROMEO Systems, Inc. On a Fully Diluted Basis *at the Time of Issuance*]." Op. 7 (brackets in original). Similarly, Section 1(a), titled "Number of Shares," provided "the Holder with the right to purchase up to one percent (1%) Shares [sic] prior to (or in connection with) the expiration of this Warrant as provided in Section 8." *Id.*

The Draft Warrant did not define "one percent (1%) Shares." A518, 14:23-16:18 (Indeglia).

Cannon sent the Draft Warrant to her counsel, Marc Indeglia, and asked him to review it to ensure it was consistent with the Release. Op. 7-8 & n.25. Indeglia revised the boldface language on the first page of the Draft Warrant to be consistent with the Release. Op. 8. It now read: "Warrant to Purchase [Up to 1.0% of ROMEO SYSTEMS, Inc. On a Fully Diluted Basis *at the Time of Exercise*]." *Id.* (brackets in original). Indeglia also revised the language in Section 1(a) of the Draft Warrant:

> *Number of Shares*. Subject to Section 3 and any previous exercise of the Warrant, the Holder shall have the right to purchase ~~up to one percent (1%) Shares~~from the Company duly authorized and validly issued Common Stock equal to the Applicable Percentage of the Common Stock Deemed Outstanding, in each case, on the date of any exercise of this Warrant, at a purchase price equal to the applicable Exercise Price, prior to (or in connection with) the expiration of this Warrant as provided in Section 8.

Op. 8-9. As he explained at trial, Indeglia made those changes to ensure that Cannon's ownership was non-dilutable, as the parties had agreed in executing the release. A521, 25:22-28:4 (Indeglia).

Indeglia added definitions directly below Section 1(a) for "Applicable Percentage," "Common Stock Deemed Outstanding," "Convertible Securities," "Options," and "Partial Exercise Percentage," Op. 9, which were all consistent with the parties' agreement to settle the payment dispute in exchange for a 1% non-

dilutable equity interest in the Company. Indeglia also changed the expiration date from August 31, 2018, to August 31, 2025. *Id.*

C. Cannon Executes and Sends the Revised Warrant to Patterson, Who Executes It (Twice)

Cannon executed and emailed the revised Warrant to Patterson in December 2015. *Id.* On its face, the Warrant differed materially from the Draft Warrant. Op. 9, 38, Most notably: "(i) the number of shares of common stock of Romeo Systems for which the Warrant would be exercised would be one percent (1%) of the Common Stock Deemed Outstanding on the date of exercise, and (ii) the expiration was August 31, 2025." Op. 9-10. There were also several defined terms added. A1252. As the Court of Chancery found, "[e]ven a cursory review would have revealed the differences" because "[t]he changes were plain from the face of the document." Op. 38.[1]

In response to Cannon's email, Patterson stated that he would print and sign the Warrant. Op. 10. A day later, he executed the Warrant on behalf of the Company and returned the signature page to Cannon via email, stating "Please see the executed

[1] Patterson includes a cropped image of a portion of the Warrant, which presents a misleading picture of what he would have seen had he actually opened and reviewed it. The trial court based its decision on a review of the full document. Op. 38. This Court should do likewise.

sig page attached. You are recorded as of today."[2] *Id.* Patterson testified that he "glanced at" the Warrant before executing it. Op. 10 n.36. He admitted that he "could have read [the Warrant] in full," "could have run his own redline," "could have sent [the Warrant]" to legal counsel to review prior to execution, and could have asked Cannon if she made any changes, but he did not do any of these things. Op. 10 n.36, 46-47.

At Patterson's request, Cannon sent the executed Warrant to Patterson again in December 2016. Op. 11. Patterson forwarded the Warrant to the Company's then-CFO, Lauren Webb, and to Company counsel, Orrick, Herrington & Sutcliff ("Orrick"). *Id.* At Patterson's direction, Webb recorded the Warrant on the Company's capitalization table as a warrant for 100,000 shares, which was incorrect. Op. 11-12 n.43.

In February 2017, Romeo Systems amended its certificate of incorporation to effect a ten-for-one stock split. Op. 12. Following the stock split, Webb updated the capitalization table to reflect the Warrant as one for 1 million shares, continuing the erroneous recording made in December 2016. *Id.*

In connection with the exploration of another transaction in July 2018, KPMG, as auditor for the counterparty, flagged the discrepancy between the

[2] At the time he executed the Warrant, Patterson was the Company's CEO and sole director. Op. 3-4 and 10 n.38.

Warrant's terms and how it was recorded on the Company's capitalization table. *Id.* The auditor stated: "The 'warrant summary report' indicates that the number shares that could be obtained is 1,000,000 whereas in the 'Cannon warrant agreement' the warrant relates to the purchase up to 1% of Romeo [Systems] on a fully diluted basis at the time of exercise." Op. 13. The Company did nothing to address the discrepancy. *Id*.

Around that same time, Webb sent Patterson the Warrant and asked him to re-sign it for the Company's records, B0165-B0166, which Patterson did on July 18, 2018. B0147-0162; B0163-0164; B0167. The Warrant (i.e., the one with the revised terms) was the only version of the document in the Company's records; the Company only became aware of the Draft Warrant during this litigation. *See* Op.11-12 n.43.

D. Patterson Loans Cannon $20,000 and Requires Her to Execute a Promissory Note and Pledge Agreement

In February 2017, Patterson agreed to lend Cannon $20,000 to retain legal counsel in a personal matter ("Loan"). Op. 13-14. Patterson required that Cannon execute a Promissory Note and Securities Pledge Agreement ("Pledge Agreement") in connection with the Loan. *Id.*

At Patterson's request, Orrick prepared both documents and, on March 2, 2017, emailed them to Patterson and Cannon, who executed them. Op. 14, 77 n.195. The executed Pledge Agreement defined "Pledged Assets" in pertinent part as "a

warrant to purchase Common Stock in the Issuer [Romeo Systems] for one million shares." Op. 14. But the actual Warrant was one to purchase up to 1% of Romeo Systems' "Common Stock Deemed Outstanding" on the date of exercise. Op. 9-10, 33-38, 47.[3] The trial court found that the errors in the Pledge Agreement were attributable to the "poor job [Patterson and his counsel] did in describing [Cannon's] collateral." Op. 77 n.195. Patterson had access to the Warrant "and could have, had he so chosen, provided the Warrant to Orrick to aid the drafting of documents." *Id.*

E. Cannon Defaults and Patterson Causes Romeo Systems to Transfer the Warrant to Himself in Purported Satisfaction of the Debt

The Promissory Note matured on March 1, 2018. Op. 17. Cannon did not repay it. *Id*. In November 2018, Romeo Systems—at Patterson's instruction—transferred the Warrant from Cannon to Patterson and registered the Warrant in Patterson's name. Op. 17-18. Patterson believed he was entitled to transfer the Warrant into his name upon Cannon's default. A573, 233:10-13 (Patterson); B0096. (Romeo resolution effecting transfer: "Mr. Patterson and [Ms.] Cannon have agreed to satisfy the Cannon Loan by transferring the Cannon Warrant to Mr. Patterson."). Patterson provided no notice to Cannon of the transfer of the Warrant, and Cannon did not provide her consent to the transfer. Op. 18.

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[3] Even viewed in absolute terms, that difference was significant. For example, "the shares underlying the Draft Warrant at the time of issuance were actually 90,000 shares, not one million shares"; after the stock split, there were "900,000, not one million." Op. 68-69.

F. Patterson and Romeo Systems Refuse to Acknowledge Cannon's Rights in the Warrant and Patterson Partially Exercises the Warrant

On October 5, 2020, Romeo Systems publicly announced a proposed SPAC merger between Romeo Systems and RMG Acquisition Corp. ("RMG") to occur in December 2020, with the newly merged, public company adopting the name Romeo Power, Inc. (NYSE: RMO). *Id.* On October 27, 2020, Patterson partially exercised the Warrant to obtain 1 million shares in Romeo Systems. *Id*.

Hearing news of the merger, Cannon contacted Indeglia and asked for his assistance ascertaining her rights under the Warrant. Op. 18-19. Indeglia reviewed the S-4 registration statement filed by RMG and saw no mention of Cannon's interest in the Company. *Id*. at 19. On November 23, 2020, Indeglia reached out to the Company's deal counsel, Paul Hastings LLP ("Paul Hastings"), to "confirm [Cannon's] interests in Romeo [Systems]." *Id*. Indeglia pointed out that there was "no mention of [Cannon] in the joint S-4/Proxy filed by RMG." *Id*. On November 27, 2020, David Hernand of Paul Hastings responded that he understood that "Cannon was issued a warrant but subsequently borrowed money from Romeo Power CEO Mike Patterson and pledged [her] warrant as collateral. The loan was never repaid, and the warrant was transferred to Mr. Patterson in satisfaction of the loan amount." *Id*.; B0090-91. Accordingly, per Hernand, "Cannon no longer ha[d] an interest in such warrant." Op. 19; B0090. Hernand attached to his email the Note,

the Pledge Agreement, and the Company board resolutions authorizing the transfer of the Warrant from Cannon to Patterson. Op. 20; B0095-96.

After Indeglia followed up to inquire about the discrepancy between the Warrant and Pledge Agreement, Hernand responded to ask whether Cannon believed that she "currently [wa]s entitled to anything" in connection with the Warrant. Op. 20. Indeglia responded on December 1, 2020, outlining Cannon's position that (1) no security interest ever attached due to the discrepancy between the Warrant and the Pledge Agreement and (2) even if a security interest had attached, Cannon still had the right to redeem the Warrant by paying off the Loan, because Patterson's purported strict foreclosure had not complied with UCC Article 9. *Id.*; A2709. Neither Hernand, nor any other Romeo Systems representative, responded to that email. Op. 20.

G. The SPAC Merger Is Consummated; Early Trading Values Cannon's Warrant at $27.4 Million; and Patterson Makes Nearly $70 Million after Selling Romeo Power Shares

The merger was consummated on December 29, 2020, and the outstanding shares of Romeo Systems were converted into shares of Romeo Power stock. Op. 21. Romeo Power's shares traded at a high of $31.01 per share the day the merger closed, and $32.73 the following day. *Id*. The Court of Chancery found that had Cannon been permitted to exercise the Warrant, she would have realized $27,419,743.12 in proceeds. Op. 92.

Patterson was unable to realize those trading prices because he was subject to a 180-day lock-up period. Op. 21-22. Cannon signed no such lock-up agreement. Op. 89.[4] Once Patterson's lock-up period expired, Patterson began selling his shares in Romeo Power. Op. 22. On June 28, 2021, Patterson sold 2,612,399 shares of Romeo Power common stock in three tranches for total gross proceeds of $22,013,702.10. *Id*. Between June 29 and October 26, 2021, Patterson sold another 9,560,000 shares of Romeo Power common stock for a total of $47,460,756. *Id*.

H. Cannon Files Suit and Patterson Retains Control of the Warrant until It Expires

Cannon filed her original complaint on February 26, 2021, against Romeo Systems, Romeo Power, and Patterson. Op. 23. Patterson retained control of the Warrant, which had only been partially exercised, until it expired. Op. 23, 93. During the litigation, Patterson pivoted from his pre-litigation position that he took the Warrant in 2018 in satisfaction of the Loan to a position that he was only holding it (and the Romeo Power shares obtained upon its exercise) for Cannon's benefit, until he eventually sold the shares in May 2022. Op. 23-24; B0073-B0074 ¶ 31-34.

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[4] In his Opening Brief, Patterson argues that there was "unrebutted" evidence in the record that Cannon would have been subject to a similar lock-up period if she had held and exercised the Warrant prior to the merger. Op. Br. 47-48. The Court of Chancery expressly found otherwise. Op. 89 ("[Patterson] has failed to present persuasive evidence to suggest that Cannon would have been subject to a lockup for the Warrant Shares."); *see infra* § II(C)(2).

On May 16, 2022, Patterson's counsel sent a letter to Indeglia representing that Patterson had sold all 121,730 Warrant shares "on a public exchange on May 3, 2022, at a price per share of $1.1585," generating $141,023.49 in proceeds." Op. 24. The letter further stated that after deducting "reasonable attorney fees and expenses totaling $6,476.25 and satisfying the debt of $20,000 and accrued but unpaid interest of $5,745," there remained $108,802.24 for Cannon. Op. 24-25. Patterson transmitted this amount to Cannon during the litigation. Op. 25. The Court of Chancery rejected that narrative, finding that Patterson "presented no admissible evidence to substantiate that he sold any shares of Romeo Power stock on May 3, 2022, let alone the Warrant Shares." *Id.* The Court further found that the letters from Patterson's counsel were "not persuasive." Op. 25 n.107.[5]

I. The Court of Chancery Holds a Trial and Issues a Detailed Decision in Cannon's Favor

Romeo Power was liquidated by its successor, Nikola Corporation, in 2023. Op. 25. Following the liquidation, Romeo Power's counsel withdrew and both Romeo Power and Romeo Systems defaulted. Op. 28. Cannon obtained a default judgment against both companies on October 20, 2023. Op. 28-29. Trial took place

[5] Patterson does not challenge these factual and evidentiary rulings on appeal. Instead, his Opening Brief merely ignores them, asserting no fewer than four times that he sold the Warrant shares when his lawyers claimed he did, without acknowledging the Court of Chancery's contrary finding. Op. Br. 2, 16, 41, 46.

over three days in early 2024. *Id*. Following trial, the parties submitted more than 300 pages of briefing.

In its 96-page opinion, the Court of Chancery found for Cannon and awarded her base damages of $27,419,743.12, plus pre- and post-judgment interest, and minus credit for (i) the outstanding principal and interest due to Patterson on the Loan, and (ii) payments that Patterson made to Cannon in May and August 2022. Op. 92, 94-96. Patterson appeals that ruling and the resulting judgment.

ARGUMENT

Patterson's assignments of error on appeal fall into two categories: (i) challenges to the trial court's finding that Patterson was liable for conversion, and (ii) a challenge to the trial court's damages award. As discussed below, the trial court's judgment should be affirmed as to both liability and damages.

I. THE TRIAL COURT CORRECTLY FOUND THAT PATTERSON WAS LIABLE FOR CONVERTING THE WARRANT

The Chancery Court found that the Warrant was valid and that no security interest attached to it because the Pledge Agreement did not adequately describe it as collateral; accordingly, the transfer of the Warrant to Patterson constituted conversion, for which Patterson was liable to Cannon in damages. Op. 77-83. This Court should affirm, both for the reasons stated by the trial court and because, even if a security interest attached to the Warrant, Patterson unlawfully converted it by not complying with the notice and redemption provisions of 6 *Del. C.* §§ 9-620 and 9-623.

A. The Trial Court Correctly Determined that the Warrant Was a Valid, Fixed-Percentage Warrant, Not a Fixed-Share Warrant for "One Million Shares" (Patterson's Issue III)

1. Question Presented

Did the trial court properly conclude that the Warrant was a warrant for 1% of the Common Stock Deemed Outstanding at the time of exercise, as opposed to a Warrant for one million shares, such that the Warrant was not adequately described by the Pledge Agreement?

2. Scope of Review

Cannon agrees that questions of law are reviewed *de novo* and factual findings are reviewed for clear error. However, whether a party manifested an intent to be bound to a contract is a question of fact. *See Eagle Force Hldgs., LLC v. Campbell*, 235 A.3d 727, 735 (Del. 2020). And "[w]hen factual findings are based on determinations regarding the credibility of witnesses, the deference already required by the clearly erroneous standard of appellate review is enhanced." *Id.*

3. Merits of Argument

Under Delaware law, "a valid contract exists when (1) the parties intended that the contract would bind them, (2) the terms of the contract are sufficiently definite, and (3) the parties exchange legal consideration." *Osborn ex rel. Osborn v. Kemp*, 991 A.2d 1153, 1158 (Del. 2010). One of the key disputes below—whether the Warrant was valid and enforceable—focused on the element of intent. As the

court below rightly observed, "[o]vert manifestation of assent—not subjective intent—controls the formation of a contract." Op. 33 (quoting *Black Horse Cap., LP v. Xstelos Hldgs., Inc.*, 2014 WL 5025926, at *12 (Del. Ch. Sept. 30, 2014)). Applying that standard, the court below found that the parties manifested their intent to bind Romeo Systems and Cannon to the terms of the fixed-percentage Warrant. Op. 32-44.

Patterson challenges that conclusion on two grounds: first, that his signature was not binding in light of Cannon's changes to the Warrant; and, second, that the court should have consulted extrinsic evidence of the parties' intent. Both arguments fail.

First, however, it should be noted that Patterson's argument elides the threshold issue of standing. He is neither a party to the Warrant, nor a third-party beneficiary of it; instead, he signed the Warrant in his capacity as CEO of Romeo Systems, and therefore cannot challenge its validity in his individual capacity. *See BAC Home Loans Servicing, LP v. Albertson*, 2014 WL 637659, at *3-4 (Del. Super. Ct. Feb. 10, 2014) (finding mortgagors lacked standing to challenge the validity of mortgagee's assignment of mortgage because they were neither parties to, nor third-party beneficiaries of, that assignment), *aff'd on other grounds*, 103 A.3d 514 (Del. 2014); *NAMA Hldgs., LLC v. Related World Mkt. Ctr., LLC*, 922 A.2d 417, 434 (Del.

Ch. 2007) (except for third-party beneficiaries, non-parties have no standing to enforce contracts governed by Delaware law).

Second, even if Patterson had standing to challenge the Warrant (he does not), his challenges would still fail. To start, there is no dispute that Patterson signed the Warrant on behalf of Romeo Systems on December 28, 2015. A461 ¶¶ 25, 27 (stipulating Patterson countersigned the signature page to the Warrant); A1353 (Patterson's executed signature page). He then re-executed the Warrant in July 2018. B0163; B0167; B0147. Those facts, the court below correctly found, are "the strongest evidence of an intent to be bound." Op. 33; *see Eagle Force Hldgs., LLC v. Campbell*, 187 A.3d 1209, 1230 (Del. 2018) (observing that "where the putative contract is in the form of a signed writing, that document generally offers the most powerful and persuasive evidence of the parties' intent to be bound").

Patterson argues that his "failure to catch Cannon's subterfuge does not mean he assented to her dramatically different version of the warrant." Op. Br. 39. In other words, he asks this Court to excuse his failure to read the Warrant before signing it. But Delaware law is clear that failure to read a contract does not provide grounds for avoiding it. *See, e.g.*, *Parke Bancorp Inc. v. 659 Chestnut LLC*, 217 A.3d 701, 711 (Del. 2019); *see also* Op. 36-38 (collecting cases). Patterson cannot use his failure to read the Warrant as a basis for unwinding it. Op. 38, 46-47.

Patterson also argues that this is the rare case in which, notwithstanding evidence of a signed contract, the trial court should have considered extrinsic evidence of the parties' intent. Op. Br. 34. It isn't. Patterson relies heavily on *Kotler v. Shipman Assocs., LLC*, 2019 WL 4025634, at *17 (Del. Ch. Aug. 21, 2019), but that case differs materially from this one. In *Kotler*, a consultant modified a draft warrant, added her signature, and inserted the counterparty's executed signature page *from an earlier draft*, without disclosing that she had modified the draft. *Id.* at *10-11. Because the company never had an opportunity to review the modified warrant and adduced credible evidence that it would not have agreed to its terms, the *Kotler* court found no meeting of the minds. *Id.* at *16. Unlike the counterparty in *Kotler*, Patterson had access to all terms of the contract and could have read it at his leisure. He didn't, and he can't escape the consequences of that failure now.[6]

* * *

[6] In a footnote, Patterson suggests that his signature on the Warrant is somehow ineffective because Romeo Systems' board never ratified it. Op. Br. 38 n.5. The trial court properly rejected that argument, explaining Patterson was the CEO of Romeo Systems and the sole director on the Board when he executed the Warrant, and therefore unquestionably had the authority to bind Romeo Systems without a board vote under 8 *Del. C.* § 141(f). *See* Op. 41-44.

In short, Patterson's regret over his decision to sign a contract without reading it is not a valid reason to avoid it. This Court should affirm the trial court's conclusion that the Warrant is valid as written.

B. The Pledge Agreement's Description of a Warrant for "One Million Shares" Was Not Adequate to Create a Security Interest in a Warrant for 1% of Common Stock Deemed Outstanding (Patterson's Issue II)

1. Question Presented

Did the trial court properly conclude that the Pledge Agreement did not reasonably identify the Warrant as collateral, where the Pledge Agreement defined the collateral as a warrant for one million shares of the Company's common stock, but the Warrant was for 1% of the Company's common stock deemed outstanding at the time of exercise?

2. Scope of Review

Cannon agrees that questions of law are reviewed *de novo* and factual findings are reviewed for clear error. Cannon further agrees that the sufficiency of the description of collateral in a security agreement is a question of law—which, it should be noted, undercuts Patterson's argument that it would be proper to consider extrinsic evidence of the parties' intent in that inquiry.[7]

[7] If extrinsic evidence were considered, then the sufficiency of the description would be a mixed question of law and fact, not a pure question of law.

3. Merits of Argument

a. Legal Framework

With exceptions not relevant here, 6 *Del. C.* § 9-203(b) provides that, in order for a security interest to be enforceable against the debtor with respect to collateral, the debtor must have "signed a security agreement that provides a description of the collateral." 6 *Del. C.* § 9-203(b). Section 9-108 further states that a security agreement's description of collateral is "sufficient, whether or not it is specific, if it reasonably identifies what is described." *Id.* § 9-108(a). "[A] description of collateral reasonably identifies the collateral if it identifies the collateral by: (1) specific listing;…(4) quantity;…or (6) any other method, if the identity of the collateral is ***objectively*** determinable." *Id.* § 9-108(b) (emphasis added).

b. The UCC Requires Courts to Employ an Objective Test to Assess Sufficiency of the Description of Collateral

The trial court correctly held that 6 *Del. C.* § 9-108 contemplates an objective analysis that considers the sufficiency of the description from the perspective of a hypothetical third party, rather than the parties to the transaction. Op. 53-60. Patterson challenges that ruling, arguing that the sufficiency of the collateral description should be evaluated from the subjective perspective of the specific parties to a transaction. Op. Br. 31. That is incorrect.

Start with the text of § 9-108, which makes clear that the "identity of the collateral" must be "***objectively*** determinable." 6 *Del. C.* § 9-108(b) (emphasis added). Also consider § 9-203(b), which imposes the "description" requirement in order for a security interest to be enforceable against "the debtor *and* third parties with respect to collateral" (emphasis added)—implying that "description" means the same thing vis-à-vis the debtor as it does vis-à-vis a third party.

The official comments to § 9-203(b) support that conclusion. Comment 3, for example, likens the collateral-description requirement to the Statute of Frauds, which exists in large part to prevent he-said-she-said disputes over contractual meaning, like the one Patterson tries to manufacture here. *See* 6 *Del. C.* § 9-203(b) cmt. 3 ("enforceability [of a security interest] requires the debtor's security agreement and compliance with an evidentiary requirement in the nature of a Statute of Frauds").

Thus, "[t]he description of collateral in a security agreement should be written with reasonable clarity so that those with an interest in the matter, *potential future lenders and reviewing courts*, need not hazard a guess as to just what property was intended to be covered." *Pan Ocean Navigation, Inc. v. Rainbow Navigation, Inc.*, 1987 WL 13519, at *7 (Del. Ch. July 8, 1987) (emphasis added); *see Bishop v. All. Banking Co.*, 412 S.W.3d 217, 219 (Ky. Ct. App. 2013) (observing that the description must objectively identify the collateral so that it "puts subsequent

creditors on notice so that, aided by inquiry, they may reasonably identify the collateral involved").

The fact that this is a dispute between the "*original* parties" to the Pledge Agreement, as opposed to one between strangers to that agreement, Op. Br. 32 n.4, is irrelevant. To be sure, there are a handful of cases that espouse a minority view that what matters in contests between the original parties to a security agreement is the subjective expectations of those parties. But as the trial court observed, those cases are impossible to square with the plain text of the statute, its animating purpose, the official UCC commentary, and the overwhelming body of case law applying an *objective* standard. *See* Op. 53 n.171; *id.* at 58-59 (collecting cases).

The lone decision Patterson cites on appeal—*Bramble Transp., Inc. v. Sam Senter Sales, Inc.*, 294 A.2d 97, 100 (Del. Super. Ct. 1971)—in no way supports his position. Op. Br. 32 n.4. To start, *Bramble* dealt with financing agreements, not security agreements. 294 A.2d at 103-04. That difference matters, because, as *Bramble* itself recognized, financing statements have different purposes and standards than security agreements. For example, the court explained that the purpose of a financing statement (unlike a security agreement) is "to put a searcher on notice that an underlying security agreement may be outstanding." *Id.* at 103. That inquiry-notice standard is a significantly lower bar than that required for security agreements, which require sufficient information to *actually identify* the

collateral. Thus, "these two documents serve essentially different functions and should be kept separate for purposes of analyzing whether a description contained in either of them is sufficient under the circumstances." 5 *Hawkland UCC Series* § 9-108:2.

At bottom, Patterson has cited nothing to disturb the trial court's well-reasoned conclusion that the adequacy of the Pledge Agreement's collateral description is an *objective* inquiry.

c. The Pledge Agreement Does Not Sufficiently Describe the Warrant as Pledged Collateral

Applying that objective standard, the trial court correctly ruled that a third party trying to identify what collateral secured Cannon's obligation to Patterson would not read the description of the collateral in the Pledge Agreement (i.e., "a warrant to purchase Common Stock in [Romeo Systems] for one million shares") to mean the Warrant (which was for one percent of Romeo System's common stock at the time of exercise). Op. 66. Accordingly, it concluded that the description of the collateral in the Pledge Agreement did not reasonably identify the Warrant as required by 6 *Del. C.* § 9-108, so no security interest attached under 6 *Del. C.* §§ 9-203(b). *See* Op. 61-72. Patterson challenges that ruling in several ways; each of those challenges fails.

First, Patterson makes what the trial court called a "quantity over quality argument," *see* Op. 65, arguing that the Pledge Agreement accurately described the

Warrant in several different ways and only made one mistake, *see* Op. Br. 32. But as the trial court noted (and even if that mode of analysis were valid), that single error was a several-million-dollar difference between a document representing one million shares of Company stock and a document representing 1% of the outstanding stock at the time of exercise.

Second, Patterson contends that, even applying an objective standard to that error instead of a subjective one, the trial court drew too fine a line. What that argument ignores, however, is that while descriptions of collateral need not be "exact and detailed," once parties decide to use an "exact and detailed" description of collateral, that description must be accurate. *See, e.g.*, *Berkshire Bank v. Kelly*, 296 A.3d 742, 746-47 (Vt. 2023) ("[The lender] created this problem for itself by incorporating the condition of possession or control into the description of the collateral. If the description did not contain such a condition, it likely would have been sufficient to create a security interest, as Article 9's description requirement is relatively easy to satisfy."); *In re Duckworth*, 776 F.3d 453, 455, 461 (7th Cir. 2014) (concluding that where security agreement provided a security interest in collateral to secure a note "dated December 13," whereas the actual note between the parties was dated December 15, no security interest attached in the collateral). Here, the description of the collateral could have simply read: "Cannon's warrant to purchase Common Stock in the Issuer." But once Patterson decided to add a more exact

descriptor (i.e., "for one million shares"), that descriptor needed to be accurate or else it would not (and did not) reasonably identify the Warrant.

Third, Patterson suggests that the trial court created a bright-line rule that "a reference to a fixed-share warrant cannot, as a matter of law, reasonably describe a percentage-based warrant." Op. Br. 33. Not so. The court simply ruled that the description of a fixed-share warrant in this particular Pledge Agreement did not describe the fixed-percentage warrant actually held by Cannon. That conclusion was clearly correct. As the court rightly observed, an objective third party would not see a description of a fixed-*share* warrant and understand it to identify a fixed-*percentage* warrant. The two types of warrants differ materially in terms of the benefits and obligations they impose and cannot be viewed as interchangeable—particularly where, as here, the percentage was pegged to the total number of shares outstanding *at exercise* rather than *at issuance*. *See* Myron Mallia-Dare & Genesa Olivieri, *Sweetening the Deal: Using Warrants to Get the Deal Done*, ABA (Oct. 8, 2021), https://www.americanbar.org/groups/business_law/resources/business-law-today/2021-october/sweetening-the-deal/ ("The number of shares underlying the warrant may be fixed or expressed as a formula….[W]hen using a formulaic approach or fixed percentage warrants, start-ups and emerging companies must carefully consider the dilutive effects of any mechanisms that allow for an increase in the number of shares a [warrant holder] may acquire. Alternatively, a company

may issue warrants to an investor that will allow the investor to purchase a fixed percentage of shares equal to a fixed percentage of the outstanding equity securities at the time of exercise.").

Fourth, Patterson argues that the trial court erred by ruling that parol evidence can never be considered when assessing the sufficiency of the description of collateral in a secured transaction. Op. Br. 34. But again, the court did not adopt a bright-line rule; rather, it found that considering parol evidence to interpret a "clean and unambiguous" security agreement here was inappropriate. Op. 69-71. None of Patterson's authorities compel a different result.

He cites, for example, *In re Brown*, 479 B.R. 112 (Bankr. D. Kan. 2012). The security agreement in that case described the collateral as seven shares of preferred stock in an LLC. *Id.* at 119. Because LLCs do not issue stock, that court found the agreement ambiguous and looked to extrinsic evidence—i.e., that the debtor owned 7 membership units in the LLC. *Id.* at 120. The court, after considering the description's deficiencies, found that, "just barely," and "[b]y an admittedly thin margin, the Bank's description 'reasonably identifie[d]'" the collateral and a security interest attached, because "LLCs typically do not issue 'stock,' a reader could reasonably conclude that the 'preferred stock' was, in fact, a membership interest." *Id.* at 117, 120. This case is very different. Because fixed-share warrants do exist,

nothing in the collateral description in the Pledge Agreement would lead a third party to conduct additional inquiry to determine if in fact the described warrant existed.

C. Cannon Is Not Precluded from Challenging the Sufficiency of the Pledge Agreement's Collateral Description (Patterson's Issue I)

1. Question Presented

Did the trial court correctly reject Patterson's argument that Cannon was precluded from challenging the sufficiency of the description of the collateral in the Pledge Agreement based on (i) equitable estoppel or waiver principles, or (ii) parol evidence of her subjective intent and understanding as to what was pledged?

2. Scope of Review

Cannon agrees that questions of law are reviewed *de novo* and factual findings are reviewed for clear error. Whether an equitable remedy exists, or was applied or not using the correct standards, is a question of law. *Ocean Bay Mart, Inc. v. City of Rehoboth Beach Del.*, 285 A.3d 125, 136 (Del. 2022); *Bäcker v. Palisades Growth Cap. II, L.P.*, 246 A.3d 81, 95 (Del. 2021). However, in reviewing the application of the correct legal standard to the facts of the case before it, this Court reviews for abuse of discretion. *Id.*

3. Merits of Argument

a. Legal Framework

Section 9-203(b) of Delaware's UCC, which is identical to § 9-203(b) of the uniform statute, provides, in pertinent part, that "a security interest is enforceable against *the debtor* and third parties with respect to the collateral *only if*…the debtor has signed a security agreement that provides a description of the collateral." 6 *Del. C.* § 9-203(b) (emphases added). As explained in the official commentary to the original 1952 version of the provision, this written-description requirement was specifically intended (i) to preclude any resort to equitable principles to create a security interest, (ii) to be enforceable by the debtor as well as by third parties, and (iii) to preclude resort to parol evidence of parties' intent to create a security interest:

> The formal requisite of a writing stated in this section is not only a condition to the enforceability of a security interest against third parties, it is in the nature of a Statute of Frauds….[A]bsent a writing which satisfies [this section, a secured party's security interest] is *not enforceable even against the debtor*, and cannot be made so on any theory of equitable mortgage or the like….Since this Article reduces formal requisites to a minimum, the doctrine [of equitable mortgage] is no longer necessary or useful. *More harm than good would result from allowing creditors to establish a secured status by parol evidence after they have neglected the simple formality of obtaining a signed writing*.

UCC § 9-203 cmt. 5 (emphases added); *see* UCC § 9-203 cmt. 3 (observing that enforceability of a security interest under § 9-203(b)(3) "requires," among other

things, "compliance with an evidentiary requirement in the nature of a Statute of Frauds").[8]

b. The Court of Chancery Correctly Declined to Apply Equitable Principles to Circumvent the Requirements of 6 *Del. C.* § 9-203(b)

Patterson argues that the equitable doctrines of estoppel and waiver preclude Cannon from challenging the sufficiency of the Pledge Agreement's description of the collateral. Op. Br. 23-26. The trial court rejected this argument as a matter of law. Op. 72-77.

Patterson argues this was erroneous, because 6 *Del. C.* § 1-103 provides that principles of equity "supplement" the provisions of the UCC "[u]nless displaced by the particular provisions" thereof, and the trial court did not cite any particular provision of the UCC that displaced equitable principles vis-à-vis the attachment of a security interest. Op. Br. 25. But, as just discussed, § 9-203(b) was specifically intended to preclude resort to equitable principles for the creation of security interests. *See Shelton v. Erwin*, 472 F.2d 1118, 1120 (8th Cir. 1973) (recognizing Article 9 as supplanting the law of equitable mortgages). And as the commentary to UCC § 1-103 makes clear, equitable principles "may not be used to *supplant* [the

[8] The official commentary to the UCC is entitled to "considerable weight as an aid to statutory construction," particularly where, as here, the provisions at issue were enacted by the Delaware legislature without change. *Acierno v. Worthy Bros. Pipeline Corp.*, 656 A.2d 1085, 1090-91 (Del. 1995).

UCC's] provisions, or the purposes and policies those provisions reflect, unless a specific provision of the [UCC] provides otherwise," failing which "the [UCC] preempts principles of common law and equity that are inconsistent with either its provisions or its purposes and policies." UCC § 1-103 cmt. 2; *accord Cont'l Fin. Co. v. TD Bank, N.A.*, 2018 WL 565305, at *2 (Del. Super. Ct. Jan. 24, 2018). Against this backdrop, it is unsurprising that Patterson can cite no case where a court relied on equitable principles to create a security interest in the face of the security agreement's failure to describe the collateral as required by § 9-203.

Regardless, even if resort to equitable principles were possible, the trial court found no *factual* basis for Patterson's equitable arguments. *See* Op. 45-47 (finding "no persuasive evidence" that Cannon waived any rights under the Warrant); *id.* at 77 n.195 (finding Patterson failed to establish the elements of equitable estoppel by clear and convincing evidence). Although these findings are subject to review only for abuse of discretion, Patterson does not even attempt to show how they constitute an abuse of discretion. Accordingly, there is no basis for this Court to disturb the trial court's finding that equitable principles may not be used to circumvent the requirements of 6 *Del. C.* § 9-203(b).

c. Patterson's "UCC Authorities" Are Neither Authoritative nor Persuasive

Patterson next argues that "UCC authorities" establish that a debtor who understands what she pledged[9] cannot challenge the sufficiency of the collateral description in the security agreement. Op. Br. 26-28.

His primary authority, which he incorrectly describes as a "leading treatise," is *Corpus Juris Secundum* (*CJS*), which is a legal encyclopedia that simply reports and organizes the holdings of cases. *CJS* does not provide expert commentary on the origin and direction of the law in the way a learned treatise would, and the persuasiveness of any particular statement in *CJS* necessarily turns on the persuasiveness of the underlying case(s) it cites.

For the statement quoted by Patterson, *CJS* cites a single case: *In re Michelle's Hallmark Cards & Gifts, Inc.*, 219 B.R. 316, 320 (Bankr. M.D. Fla. 1998). And as noted by the trial court, the relevant statement in this case was *dicta*, for which it relied solely on another case, *In re Florida Bay Trading Co.*, 177 B.R. 374, 381 (Bankr. M.D. Fla. 1994), which itself cited no case law or provision of the UCC. Op. 54-55.

* * *

[9] As Patterson acknowledges, however, the trial court did not actually reach the issue of what the parties subjectively understood or intended with respect to the Pledge Agreement. Op. Br. 22 (citing Op. 55-56 n.172).

All told, the trial court devoted nearly eight pages of its opinion to the careful consideration this issue, including the cases cited by Patterson, contrary case law, the statutory language, the official UCC commentary, and the Delaware Study Comments. Op. 53-60. Patterson does not meaningfully engage with that analysis, and the trial court's decision on this issue should be affirmed.

D. Even if Patterson Had a Security Interest in the Warrant, His Purported Strict Foreclosure in Violation of 6 *Del. C.* § 9-620 Constituted Conversion (Alternative Grounds for Affirmance)

1. Legal Framework

If a secured party "disposes" of collateral after the debtor's default, the secured party must pay to the debtor any surplus proceeds. *See* 6 *Del. C.* § 9-615(d). Alternatively, a secured party can also "accept" the collateral in full or partial satisfaction of the debt, which is permitted *only if* either (a) the debtor consents by agreeing to the terms of such acceptance in a record signed after default, or (b) the secured party sends to the debtor, after default, a proposal to accept the collateral in full satisfaction of the debt and does not receive a notification of objection signed by the debtor within 20 days. 6 *Del. C.* § 9-620(a). This acceptance-of-collateral-in-satisfaction is called a "strict foreclosure." In response to such notice from the secured party, the debtor can either object (thereby forcing a disposition of the collateral, from which the debtor will be entitled to any surplus), or "redeem" the collateral by paying off the debt.

The debtor's right to consent (or object) to a strict foreclosure is crucial, because an effective acceptance of the collateral by the secured party transfers to the secured party *all* of the debtor's rights in the collateral, 6 *Del. C.* § 9-622(a)(2), and the debtor loses any right she may otherwise have (i) to any surplus value of the

collateral in excess of the debt amount, *see Born v. Born*, 374 P.3d 624, 634 (Kan. 2016), or (ii) to redeem the collateral by tendering payment of the debt, *see* 6 *Del. C.* § 9-623(c)(3) (providing that redemption right ends upon secured party's acceptance of collateral). Thus, where a secured party proposes to strictly foreclose on collateral that is worth substantially more than the amount of the debt it secures, the debtor's right to notice of the proposed strict foreclosure provides an important safeguard against the creditor obtaining a windfall at the debtor's expense. *Born*, 374 P.3d at 634.

2. Patterson's Purported Strict Foreclosure Violated 6 *Del. C.* § 9-620 and Was Not Effective; Thus, Patterson's Purported Taking of "All Right, Title, and Interest" to the Warrant Constituted Conversion

In November 2018, Romeo Systems—at Patterson's instruction—transferred the Warrant from Cannon to Patterson and registered the Warrant in Patterson's name. Op. 17-18. However, it was undisputed at trial that Patterson provided no notice to Cannon of the transfer of the Warrant, and Cannon did not provide her consent to the transfer. Op. 18. Thus, Patterson could *not* have obtained all right, title, and interest in the Warrant, and Cannon would at all times have retained her right to redeem the Warrant. *See* 6 *Del. C.* § 9-620(b) (providing that a purported acceptance of collateral that is not in compliance with the statutory requirements is ineffective).

Patterson's failure to recognize this in 2018 when he purported to take the Warrant, and again in the run-up to this litigation when he advised Cannon's lawyer, through counsel, that Cannon had "no interest" in the Warrant as a result of its transfer to Patterson, constituted conversion. *See Arnold v. Soc'y for Sav. Bancorp, Inc.*, 678 A.2d 533, 536 (Del. 1996) ("Conversion is an 'act of dominion wrongfully exerted over the property of another, in denial of h[er] right, or inconsistent with it.'"); *Segovia v. Equities First Hldgs., LLC*, 2008 WL 2251218, at *19-20 (Del. Super. Ct. May 30, 2008) (finding secured lender committed conversion where it took actions with respect to the collateral that exceeded its authority under the loan documents and UCC Article 9). And, because Patterson's actions amounted to a clear denial of Cannon's rights in the Warrant, Cannon was not required to make a formal demand to Patterson for return of the Warrant prior to commencing this action. *See* Op. 79-82; *see also, e.g.*, *HHH Farms, L.L.C. v. Fannin Bank*, 648 S.W.3d 387, 432 (Tex. App. 2022), *reconsideration denied* (Mar. 1, 2022), *reh'g denied* (Mar. 1, 2022), *review denied* (Sept. 1, 2023).

* * *

In short, even if a security interest had attached to the Warrant, Patterson remains liable for conversion because he transferred the Warrant to himself without notice to Cannon and without affording her the right of redemption guaranteed to her by Article Nine.

E. The Pledge Agreement's Exculpation Provision Does Not Absolve Patterson from Liability (Patterson's Issue IV)

1. Question Presented

Whether the Chancery Court erred by not applying the Pledge Agreement's exculpation provision. Patterson *failed* to adequately raise this issue below, and for that reason, the Chancery Court did *not* consider it. Op. 71-72; *contra* Op. Br. 40.

2. Scope of Review

This Court reviews a trial court's finding of waiver under the standard of plain error. *Ravindran v. GLAS Tr. Co.*, 327 A.3d 1061, 1077 (Del. 2024). If the trial court had ruled on the merits of this argument, then Cannon agrees that this Court's scope of review of that ruling would be *de novo*.

3. Merits of Argument

The Pledge Agreement contains an exculpation provision that purports to limit Patterson's liability for any "acts, omissions, errors or mistakes of fact or law,…except for those arising out of or in connection with [his] gross negligence or willful misconduct." A1733 at 4. Like he did in his post-trial briefing, Patterson now argues that this provision absolves him from liability for converting the Warrant because his transgression was supposedly based on a good-faith belief that his actions were lawful. He is wrong for several reasons.

First, as noted by the trial court, Patterson's argument for application of the exculpation provision presupposed the court would determine that a security interest

attached to the Warrant. He never asserted that the exculpation provision would still apply if the court found (as it did) that no security interest attached; accordingly, the court concluded that he waived that argument. Op. 71-72. Patterson now contends he broadly raised the issue of exculpation below, and the trial court was wrong to require more specificity. Op. Br. 43-44. But Delaware courts follow strict preservation rules that distinguish between raising a general issue and presenting a particular legal argument. *See, e.g.*, *Russell v. State*, 5 A.3d 622, 627 n.15 (Del. 2010) (denying review where a party "presented a different theory to support her objection to the trial court than she presented on appeal"); *Del. Acceptance Corp. v. Swain*, 2012 WL 6042644, at *4 n.13 (Del. Super. Ct. Nov. 30, 2012) (vague and fleeting references to a topic does not preserve a specific argument for appeal). Not only was the trial court's ruling correct, but it is entitled to deference, and Patterson has presented no compelling argument for why it should be disturbed here.

Second, if Cannon had the chance to address Patterson's argument in the court below, she would have explained that it lacks merit because intentional torts like conversion generally cannot be exculpated through contractual provisions, as such clauses violate public policy. *See, e.g.*, *Data Mgmt. Internationalé, Inc. v. Saraga*, 2007 WL 2142848, at *4 (Del. Super. Ct. July 25, 2007); *Koutoufaris v. Dick*, 604 A.2d 390, 401-02 (Del. 1992); *Blum v. Kauffman*, 297 A.2d 48, 49 (Del. 1972).

Third, Cannon would also have explained that Patterson's argument is independently foreclosed by 6 *Del. C.* § 9-602, which provides that "to the extent that they give rights to a debtor or obligor and impose duties on a secured party, the debtor or obligor may not waive or vary the rules stated in" certain enumerated sections, including § 9-620 and § 9-625. Here, Cannon sued Patterson pursuant to Section 9-625(b) of the UCC, which renders secured parties "liable for damages in the amount of *any loss caused by a failure to comply with this article*," 6 *Del. C.* § 9-625(b) (emphasis added), on account of Patterson's violation of 6 *Del. C.* § 9-620 in connection with his purported strict foreclosure upon the Warrant in 2018, among other things. A provision in the Pledge Agreement purporting to limit Patterson's liability under these sections would thus violate 6 *Del. C.* § 9-602.

II. THE TRIAL COURT'S DAMAGES AWARD WAS PROPER AND SHOULD BE AFFIRMED (PATTERSON'S ISSUE V)

A. Question Presented

Did the trial court properly apply the agreed-upon legal framework to the evidence presented at trial in order to assess Cannon's damages for conversion of the Warrant?

B. Standard and Scope of Review

Cannon agrees that damages awards are reviewed for abuse of discretion.

C. Merits of Argument

The measure of damages for conversion is the highest intermediate value between notice of the conversion and a reasonable time thereafter during which the stock could have been replaced. *See Duncan v. Theratx, Inc.*, 775 A.2d 1019, 1023-24 (Del. 2011). While the parties and the Chancery Court agreed that was the correct legal framework, Patterson argues that the Chancery Court erred in its application. *See* Op. Br. 45. In particular, Patterson claims the court below erred in two respects: (i) that it should have instead calculated damages based on Patterson's 121,730 post-merger shares instead of the 1% of the equity of Romeo Systems at exercise (i.e., 965,246 shares); and (ii) that it declined to apply the 180-day lock-up to the 1% of outstanding stock. Both arguments fail.

1. The Trial Court Correctly Determined that Patterson Was Responsible for Damages for the Full Number of Shares Obtainable via the Warrant

Patterson first contends (as he did below) that he cannot be liable for damages based on the hypothetical number of shares in Romeo Power that Cannon could have received from exercising the Warrant (i.e., 965,246 shares) as opposed to the 121,730 shares Patterson actually received. Op. Br. 45-46. Although Patterson cited no authority for that argument below, Op. 93, he now cites a single case, *Macrophage Therapeutics, Inc. v. Goldberg*, 2021 WL 2582967 (Del. Ch. June 23, 2021), *see* Op. Br. 46. His belated decision to cite authority for his argument does not save it.

In *Macrophage*, the plaintiff company alleged that its former CEO breached his duties to the company by wrongfully exercising control over corporate property—specifically, the company's intellectual property sublicense—by transferring it to an entity he controlled without authorization. 2021 WL 2582967, at *1. After trial, the court found that the plaintiff had not met its burden of proving conversion because the plaintiff claimed that the defendant had converted its "intellectual property" but had not substantiated what "intellectual property" had allegedly been converted. *Id.* at *21. Thus, the court declined to "award[] damages based on a finding that Dr. Goldberg has converted unidentified property that he does not now, and may never have possessed." *Id.* at *22.

Here, by contrast, there is no dispute that Patterson caused Romeo Systems to convert the entire Warrant by registering it in his own name in 2018,[10] and he thereafter maintained control of it throughout this litigation, in derogation of Cannon's rights in it, until it finally expired upon Romeo Power's acquisition by Nikola Corp. Even though Patterson elected to exercise the Warrant for only 121,730 shares, he converted the entire Warrant, which is the proper measure of damages.

2. The Trial Court Correctly Found that Cannon Was Not Subject to the 180-day Lock-Up Period

Next, Patterson argues the court below should have reduced Cannon's damages to account for the fact that any Romeo Power shares Cannon could have obtained after the de-SPAC merger would have been subject to a 180-day lockup period, which would have "dramatically" reduced the damages award. Op. Br. 48. Patterson's argument mischaracterizes the record. He did so in his post-trial briefing, as well, and in response the court made detailed factual findings, including that:

- The only executed lock-up agreement in the record is Patterson's. B0141. Patterson presented no evidence of any other stockholder even being asked to execute a lock-up agreement. *See* Op. 89.

[10] As found by the trial court, this constituted conversion because he had no security interest in the Warrant. *Supra* § 1(B)(3). But even if he had a security interest in the warrant, this still constituted conversion because he purported to take "all right, title, and interest" in the Warrant even though his purported strict foreclosure was ineffective for non-compliance with 6 *Del. C.* § 9-620 (in which case, Cannon would have retained a right of redemption). *Supra* § 1(D)(2).

- Patterson admitted on cross examination that only "key members" were required to agree to a lock-up. A641, 370:7-10 (Patterson).
- Patterson then acknowledged on cross examination that he was "unsure" whether Cannon would have been required to execute a lock-up agreement. A641-A642, 371:23 372:3(Patterson).
- Webb, on cross examination, testified that the merger was conditioned on a certain number of *shares* being locked up, not that every *stockholder* would be required to execute a lock-up agreement. A663-A665, 463:15-464:4(Webb). She then identified two stockholders that she knew of who did not sign lock-up agreements. *Id.* at A665-A666, 467:22-469:2.

On that record, the court below determined that Patterson had failed to establish that Cannon was or would have been subject to a lock-up period. That finding, which was based on the court's assessment of the evidence presented during trial and the credibility (or lack thereof) of certain witnesses, is entitled to considerable deference and should not be disturbed.

* * *

At bottom, the trial court's damages calculation should be affirmed in its entirety.

CONCLUSION

For the reasons stated here, the Chancery Court's judgment and decision should be affirmed in their entirety.

OF COUNSEL:

M. CRIS ARMENTA, PC
M. Cris Armenta
(*pro hac vice*)
M. Cris Armenta PC
217 Clancy Way
Bozeman, MT 59718
(310) 488-2080
cris@crisarmenta.com

FAEGRE DRINKER BIDDLE & REATH LLP

/s/ Patrick A. Jackson
Brett D. Fallon (#2480)
Patrick A. Jackson (#4976)
Jaclyn C. Marasco (#6477)
222 Delaware Avenue, Suite 1410
Wilmington, DE 19801
(302) 467-4200
brett.fallon@faegredrinker.com
patrick.jackson@faegredrinker.com
jaclyn.marasco@faegredrinker.com

Mark D. Taticchi (*pro hac vice*)
Elizabeth M. Casey (*pro hac vice*)
One Logan Square, Suite 2000
Philadelphia, PA 19103
(215) 988-2989
mark.taticchi@faegredrinker.com
elizabeth.casey@faegredrinker.com

Attorneys for Plaintiff Below/Appellee, Lady Benjamin PD Cannon

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