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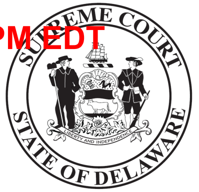

IN THE SUPREME COURT OF THE STATE OF DELAWARE

MICHAEL PATTERSON, Defendant Below, Appellant, v. LADY BENJAMIN 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

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<u>**INTRODUCTION**</u>

The facts of this case are largely uncontested: Michael Patterson loaned Lady Benjamin Cannon $20,000 to hire a criminal lawyer. To secure the loan, Cannon executed an agreement pledging a warrant entitling her to purchase common stock in Romeo Systems, Inc. Cannon signed off on the Pledge Agreement's collateral description, represented that she owned the pledged assets, and contemporaneously affirmed by email that she intended to pledge "whatever [s]he ha[d] in Romeo." In discovery, Cannon conceded that she intended "to pledge her 'Romeo shares.'"

Patterson relied on the Pledge Agreement's collateral description when he extended the $20,000 loan. Patterson did so again when, after Cannon defaulted, he transferred the collateral into his name. Meanwhile, Cannon accepted the benefits of the bargain *and more*—she never repaid a dime.

Given these uncontested facts, the trial court should have concluded that estoppel and waiver barred Cannon from attacking a collateral description that she repeatedly affirmed, and from challenging the enforceability of an agreement that she expressly represented "constitute[d] a legal, valid and binding obligation … enforceable in accordance with its terms."

To avoid that straightforward conclusion, Cannon advances an unduly formalistic U.C.C. Article 9 argument that the Pledge Agreement's collateral description is "insufficient." In Cannon's view, *any* discrepancy in an "exact and

detailed" collateral description renders it invalid. But Article 9 requires only that the description "reasonably identify" the collateral—not describe it with perfect precision. Moreover, because Cannon believes that Section 9-203 precludes the application of equitable principles, she contends that a technically deficient collateral description renders the entire security agreement unenforceable and any foreclosing creditor liable in tort.

The trial court embraced this untenable approach to Article 9, triggering a cascade of consequences whereby Cannon, who enjoyed *all* benefits of the Pledge Agreement and never repaid the loan, could attack an agreement that she authenticated and affirmed, unwind her pledge, vacate Patterson's security interest, and walk away with a $40+ million judgment for conversion. Meanwhile, Patterson faces a devastating personal judgment—all for loaning $20,000 to a colleague in a time of need, following the Pledge Agreement's terms, selling the collateral on the open market, and returning the surplus to Cannon as the U.C.C. required.

Perversely, Cannon's arguments flow from her own deception in obtaining an "at exercise" warrant—and her tactical silence once her loan came due. She asks this Court to disregard her role in creating the confusion that led to the supposed error in the collateral description and her subsequent default. And she asks the Court to find unenforceable what she expressly agreed was "enforceable" and to invalidate the Pledge Agreement in its entirety even though she agreed to a severability clause.

If this result stands, Cannon will have transformed a long-overdue $20,000 debt into an eight-figure lottery ticket, at the expense of someone who loaned her money when nobody else would, whom she never repaid, and whom she promised would be exculpated for "mistakes of fact or law."

ARGUMENT

I. ESTOPPEL AND WAIVER BAR CANNON FROM CHALLENGING THE SUFFICIENCY OF THE PLEDGE AGREEMENT'S COLLATERAL DESCRIPTION

Because she neglected to contend otherwise in her answering brief, Cannon effectively concedes that she intended to pledge the Warrant as collateral to secure the $20,000 loan she received from Patterson, that she had only one warrant to pledge, and that she made multiple representations and warranties in the Pledge Agreement affirming her ownership of the collateral. OB 12, 21-22. She reaffirmed that intent in contemporaneous emails. OB 1, 11, 22. Thus, Cannon does not dispute that she failed to "object to the Pledge Agreement's description of her warrant, propose alternative language, or indicate that the warrant … entitled its holder to a different number of shares." OB 21-22.[1]

On these facts, the equitable doctrines of estoppel and waiver preclude Cannon from challenging the sufficiency of the Pledge Agreement's description of her warrant. OB 20-28. Cannon repeatedly confirmed that the Pledge Agreement's description of the collateral was correct, accepted its benefits, allowed Patterson to rely on it to his detriment, and then challenged it afterward. OB 23-28. Cannon's arguments to the contrary fail.

[1] Undefined capitalized terms have the meanings ascribed to them in Appellant Patterson's Opening Brief ("OB"). "AB" refers to Appellee Cannon's Answering Brief.

A. U.C.C. Section 9-203 Does Not Displace Estoppel or Waiver

Cannon first errs in contending that application of these equitable principles is inconsistent with Section 9-203, the U.C.C.'s written-description requirement. AB 30. As Cannon acknowledges (AB 34), "common-law principles, including estoppel, survive the enactment of the UCC unless they are specifically displaced by UCC provisions." 1 Elizabeth Warren & Jay Lawrence Westbrook, The Law of Debtors and Creditors § 7:73 (2025). In particular, Section 1-103(b) states that, "[u]nless displaced by the particular provisions of the Uniform Commercial Code, the principles of law *and equity*, including . . . *estoppel*, . . . and other validating or invalidating cause *supplement* its provisions." 6 *Del. C.* § 1-103(b) (emphasis added); *see Kallop v. McAllister*, 678 A.2d 526, 530 (Del. 1996) ("[T]he provisions of the Uniform Commercial Code are generally supplemented by principles of law and equity."); *Acierno v. Worthy Bros. Pipeline Corp*, 656 A.2d 1085, 1088–92 (Del. 1995), *as revised* (Apr. 17, 1995).

Section 9-203 contains no clear statement displacing estoppel principles. That provision simply says "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). The parties satisfied that requirement here: Cannon signed the Pledge Agreement, which describes the collateral. Nothing in Section 9-203

displaces the traditional equitable principles that prevent a debtor who intended to pledge an asset from later disputing a collateral description she repeatedly affirmed accurately reflected the parties' intent.

Courts have rejected similar efforts by debtors to invoke Article 9 to avoid their obligations under security agreements. In *Green Tree Financial Corp. v. Stone*, 2000 WL 1610637 (Del. Super. Sept. 29, 2000), *aff'd*, 781 A.2d 696 (Del. 2001) (TABLE), for example, the debtor attempted "to claim sanctuary for his wrongdoing" by arguing that his creditor violated Section 9-504's requirements when he sent notice of a sale through an agent. *Id.* at *5. Despite recognizing that Section 9-504's text "does not expressly allow delegation of the sending of notice," *id.* at *4, the court nonetheless rejected the debtor's attempts to "skew[] the statutory purpose" of the provision as "patently absurd," "inequitable," and inconsistent with the U.C.C. *Id.* at *5; *see In re Duckworth*, 776 F.3d 453, 458 (7th Cir. 2014) ("We are confident that the bank would have been able to obtain reformation [of security agreement containing discrepancy] – even of an unambiguous agreement – against the original borrower if he had tried to avoid the security agreement based on the mistaken date").

Cannon contends that "§ 9-203(b) was specifically intended to preclude resort to equitable principles for the *creation* of security interests." AB 33–34 (emphasis added). But here, Patterson appeals to equity to prevent Cannon from *destroying* the

security interest she conveyed via the authenticated Pledge Agreement that described the collateral, OB 16, not to *create* a security interest. Accordingly, *Shelton v. Erwin*, 472 F.2d 1118 (8th Cir. 1973), is inapposite. That case similarly asked whether the parties had *created* a security agreement, not whether the debtor could be estopped from challenging the description in that agreement. *See id.* at 1119-20. In any event, *Shelton* is more than 50 years old, and many courts have declined to follow it. *See In re Giaimo*, 440 B.R. 761 (6th Cir. 2010) (declining to follow *Shelton* and citing the "the liberal policies of the UCC") (collecting cases).

Finally, Cannon's reliance on commentary to the 1952 version of Section 1-103 is misplaced. *See* AB 33. That commentary addresses only the "theory of equitable mortgage," U.C.C. Section 9-203 cmt. 5 (AM. L. INST. & UNIF. L. COMM'N 2025), not all "equitable principles," including estoppel. Moreover, this Court does not read U.C.C. provisions as displacing the common law unless the U.C.C.'s text requires it, regardless of commentary. *Acierno*, 656 A.2d at 1092 (concluding that U.C.C. provision did "not displace the common law doctrine of accord and satisfaction" and noting that the "Delaware Study Comment" "cannot supersede the text."); *see* Robyn L. Meadows, *Code Arrogance and Displacement of Common Law and Equity: A Defense of Section 1-103 of the Uniform Commercial Code,* 54 SMU L. Rev. 535, 551 (2001) ("Strict adherence to Code rules without concern for the

improper actions of a party . . . suggests a return to legal formalism—an approach the Code has rejected.") (collecting authorities).

B. Applying Equitable Principles Here Would Supplement, not Supplant, the U.C.C.'s Provisions

Cannon also suggests that applying equitable principles here would supplant the U.C.C. more broadly. *See* AB 34–35. But multiple U.C.C. authorities support the application of waiver and estoppel. OB 25-26. Cannon attacks these authorities as "neither authoritative nor persuasive," AB 36, taking special aim at Section 44 of Corpus Juris Secundum (C.J.S.). That source recites the fundamental proposition that, "if the parties to the agreement understand what collateral was pledged, the security interest cannot be challenged on the basis that the agreement insufficiently describes the collateral." 79 C.J.S. *Secured Transactions* § 44 (2025). Cannon disparages C.J.S. as a "legal encyclopedia that simply reports and organizes the holdings of cases." AB 36. Whether the C.J.S is better classified as a treatise or an encyclopedia is beside the point—C.J.S. is persuasive authority that courts routinely rely upon. *See, e.g.*, *In re Wharton,* 563 B.R. 289, 298 (9th Cir. Bankr. App. Panel, 2017).

In any event, Patterson cited multiple cases confirming that equitable principles preclude a contracting party from challenging a collateral description as insufficient where the parties understand what collateral was pledged. OB 29-30. Cannon largely ignores these decisions, seeking to distinguish only one of them as

dicta and suggesting another lacks reasoning. AB 36. But Cannon has no answer for the other decisions—which explicitly held that a party to a security agreement could not challenge a collateral description on similar facts as here. *See, e.g.*, *In re O&G Leasing, LLC*, 456 B.R. 652, 663 (Bankr. S.D. Miss. 2011).

The decisions Cannon cites do not support her argument. AB 34–35. *Cont'l Fin. Co. v. TD Bank, N.A.*, 2018 WL 565305 (Del. Super. Ct. Jan. 24, 2018) rejected a common-law claim (for negligence) because of a U.C.C. section "*enacted to govern exactly this type of dispute*." *Id.* at *3 (emphasis added) (citation omitted). Here, by contrast, neither Section 9-203, nor any other provision of the U.C.C., was "enacted to govern" a situation where a debtor-in-default attempts to avoid its secured obligation by belatedly attacking the security agreement's collateral description.

Nor can Cannon defend the trial court's sweeping conclusion that the U.C.C's "purposes and policies" automatically override equitable principles because "third parties" supposedly need "clarity of contract with regard to security interests held by other parties." PTO at 30-31. Cannon ignores countervailing considerations, including that allowing debtors-in-default to challenge the sufficiency of collateral descriptions *that they expressly reaffirmed* will inspire "costly litigation." *See* PTO at 31. This case is a prime example. Other purposes and policies of the U.C.C., including "permit[ting] the continued expansion of commercial practices through

custom, usage, *and agreement of the parties*," 6 *Del. C.* Section 1-103(a)(2), weigh heavily against Cannon.

C. Patterson Proved Estoppel and Waiver

Cannon halfheartedly contends that Patterson failed to prove estoppel by clear and convincing evidence. *See* AB 3, 35. But this is a textbook case for estoppel: the debtor confirmed the collateral description's adequacy at the time of contracting, shortly afterwards by email, and later admitted that she intended to pledge all her equity in Romeo. OB 11-12. At any rate, Patterson's waiver defense required a lesser burden, which he readily satisfied—including by presenting the Pledge Agreement, in which Cannon affirmed that she owned the pledged assets and that the agreement was enforceable. OB 21-22.

* * *

In sum, the Pledge Agreement's collateral description cannot be sufficient to allow Cannon to enjoy the benefits of Patterson's $20,000 loan, but insufficient to bind Cannon to her obligation to repay the loan or relinquish control of the pledged asset (the Warrant) for public sale to satisfy the debt. This Court should apply equitable principles to prevent that "inequitable" result. *See, e.g.*, *Green Tree Fin. Corp.*, 2000 WL 1610637, at *5.

II. THE ALLEGED ERROR IN THE COLLATERAL DESCRIPTION DID NOT INVALIDATE PATTERSON'S SECURITY INTEREST

Even if Cannon could challenge the collateral description, that challenge would fail. Section 9-108 provides that a collateral description "is sufficient, whether or not it is specific, if it reasonably identifies what is described." 6 *Del. C.* § 9-108(a). That standard is "easy to satisfy" and requires "[n]o magic words." *Haft v. Haft*, 671 A.2d 413, 417 (Del. Ch. 1995); *Berkshire Bank v. Kelly*, 296 A.3d 742, 747 (Vt. 2023) ("Article 9's description requirement is relatively easy to satisfy"). The test is whether the description "do[es] the job assigned to it: make possible the identification of the collateral described." 6 *Del. C.* § 9-108 cmt. 2.

The Pledge Agreement satisfies that standard. OB 31. It detailed the type and quantity of the asset ("a [singular] warrant"), the type of warrant ("to purchase Common Stock"), the issuer ("Romeo"), the current holder of the warrant ("Cannon"), the number of shares the warrant's holder could purchase ("one million"), and the fact that the collateral included all proceeds from any disposition of the warrant. OB 31-32. Even assuming the Pledge Agreement misdescribed the share total, these other details provided ample information for a third party to identify the collateral at issue, especially because Cannon owned only one warrant for Romeo shares.

A. Cannon Advances a Legal Regime Akin to the Rejected Serial Number Test

Cannon argues that an "exact and detailed" collateral description "must be accurate" in *every* detail. *See* AB 28. That rigid and formalistic test contradicts Section 9-108's lenient "reasonable identification" standard. As the U.C.C. comments explain, Section 9-108 deliberately "***rejects any requirement*** that a description is insufficient unless it is exact and detailed (the so-called 'serial number' test)." 6 *Del. C.* § 9-108 cmt. 2 (emphasis added).

Cannon suggests that the parties could have described the collateral more generally—as "Cannon's warrant to purchase Common Stock in the Issuer"—thereby avoiding the supposed loophole she now exploits. AB 28. But under the trial court's analysis, Cannon's proposed definition would have been vulnerable to attack for overbreadth, as, according to the court, "a warrant to purchase Romeo Systems stock is something that Cannon might own more than one of." PTO at 28.

Both Cannon's standard and the trial court's reasoning ignore the role of context in determining whether a description reasonably identifies the collateral. As Patterson explained in his Opening Brief (OB 33-37), courts consistently recognize that a collateral description is sufficient, even if it contains some inaccurate details, so long as additional information and context "provide[] a 'key' to the collateral's identity." *In re Pickle Logging, Inc.*, 286 B.R. 181, 184 (Bankr. M.D. Ga. 2002); *see also, e.g.*, *In re Brown*, 479 B.R. 112, 119 (Bankr. D. Kan. 2012); *In re Bucala*,

464 B.R. 626, 630-31 (Bankr. S.D.N.Y. 2012); *In re Snelson*, 330 B.R. 643, 649-50 (Bankr. E.D. Tenn. 2005); *Appleway Leasing, Inc. v. Wilken*, 591 P.2d 382, 384 (Or. Ct. App. 1979); *In re Fla. Bay Trading Co.*, 177 B.R. 374, 381 (Bankr. M.D. Fla. 1994); *Fifth Third Bank v. Comark, Inc.*, 794 N.E.2d 433, 439–40 (Ind. Ct. App. 2003).

Cannon addresses only one of Patterson's cited decisions—*In re Brown*—and offers no persuasive distinction. *In re Brown* held that a collateral description was sufficient even though it misidentified the LLC units pledged as "shares of preferred stock." 479 B.R. at 119. Contrary to Cannon's suggestion (AB 30), that holding did not rest solely on the ground that "LLCs typically do not issue 'stock.'" The court also relied on context, including that third parties "could easily contact [the issuer] . . . for further information" about the collateral. 479 B.R. at 120. Likewise, here, a third party could easily have contacted Romeo and confirmed that Cannon had only one warrant for Romeo shares.

Cannon's own authorities do not support her "exacting and detailed standard." To the contrary, *Berkshire Bank v. Kelly*, 296 A.3d 742, 746-47 (Vt. 2023), confirms that "Article 9's description requirement is relatively easy to satisfy." *Id.* at 747. Moreover, the secured lender in *Berkshire Bank* failed to satisfy the *threshold requirement* to sign a control agreement to bring the account within the security agreement's collateral definition. No such fundamental omission exists here.

Patterson and Cannon signed an agreement with a collateral description that they repeatedly agreed on and confirmed was correct (even if that description was later found to contain an error).

Nor does *In re Duckworth*, 776 F.3d 453 (7th Cir. 2014) support Cannon's proffered standard. *Duckworth* involved litigation between a secured lender and a *bankruptcy trustee*—not the original debtor and the secured lender. *Id.* at 455. The court found that distinction significant, expressing confidence that "the bank would have been able to obtain reformation—even of an unambiguous agreement—*against the original borrower*," but emphasizing that "[a] bankruptcy trustee is in a different position" because "trustees may exercise the so-called strong-arm power [against other lenders]." *Id.* at 458 (emphasis added). The court explained that the trustee "would be entitled to rely on the text of a security agreement, despite extrinsic evidence that could be used between the original parties to correct the mistaken identification of the debt to be secured." *Id.* at 459. *Duckworth* thus anchors its conclusions about parol evidence, mistaken collateral identification, and Section 9-203 in the context of secured lenders and trustees. *Id.* at 462 ("[W]e hold that the mistaken identification of the debt to be secured cannot be corrected, *against the bankruptcy trustee*, by using parol evidence to show *the intent of the parties to the original loan*.") (emphasis added). Because Cannon is neither a bankruptcy trustee nor a later lender, *Duckworth* provides no support.

B. Cannon's Proposed Test Is Divorced From Context

Contrary to Cannon's assertion, Patterson's argument does not hinge on a subjective, rather than objective, analysis of the sufficiency of the collateral description. AB 24–27. Even an objective assessment requires consideration of context. And here, the relevant context supports Patterson's position.

As Cannon acknowledged in post-trial briefing, the *UCC Transaction Guide* explains that a collateral description is sufficient if "it allows third persons, aided by reasonable inquiries *which the instrument itself suggests*, to identify the property, *id.* § 29:13 (emphasis added)." AR8. Cannon's own authority confirms the point: "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." *See* AB 25-26 (citing *Bishop v. All. Banking Co.*, 412 S.W.3d 217, at 219 (emphasis added). Here, the Pledge Agreement's reference to a Romeo warrant would put a reasonable third party on notice to review Cannon's warrants. Upon learning that Cannon held only one Romeo warrant, the third party would understand that it was encumbered. Collateral is objectively discernible where the debtor owns only one asset that the description aims to capture. *See* 4 White, Summers, & Hillman, Uniform Commercial Code § 31:5 (6th ed. 2013) (description of a Mack Truck with an inaccurate serial number would still be adequate because "[i]t would be objectively determinable that the debtor *owned only one Mack Truck*

and that the parties intended to create a security interest in that truck" (emphasis added)).

III. PATTERSON AND CANNON AGREED UPON AN ACCURATE COLLATERAL DESCRIPTION

In any event, the Pledge Agreement's collateral description accurately identified the warrant to purchase one million shares. Cannon consistently flagged and requested permission for even minor changes to legal documents. OB 37-38. Yet here, Cannon surreptitiously altered the warrant's material terms after she and Patterson had reached an agreement. She failed to prove a meeting of the minds on a warrant of the magnitude she now claims. OB 37-39.

Cannon cannot evade that conclusion by questioning Patterson's standing. According to Cannon, Patterson lacks standing because "[h]e is neither a party to the Warrant, nor a third-party beneficiary of it[.]" AB 19. But Patterson is no "mere intermeddler" seeking an advisory opinion on a contract in which he has no interest. *See Schoon v. Smith*, 953 A.2d 196, 200 (Del. 2008); *cf. In re Pantalone*, 2011 WL 6357794, at *2 (Del. Ch. Dec. 9, 2011) (finding individual who was a party neither to the secured loan *nor* the underlying mortgage to be a "mere intermeddler" without standing). Cannon acknowledges that Patterson "signed the Warrant in his capacity as CEO of Romeo Systems." AB 19. Whether he challenges the agreement in his CEO or individual capacity, he is entitled to challenge the Warrant as a signatory. Cannon does not contend that Patterson understood Cannon's subterfuge in one capacity, but not the other. She simply maligns him for "fail[ing] to read the Warrant

before signing it," effectively conceding that Patterson did not catch Cannon's Christmas Day sleight of hand in either capacity. *See* AB 20.

Besides, Patterson is entitled to challenge the warrant in defending against the conversion claim. Cannon's conversion claim requires that Patterson sold shares he was not entitled to control. The accuracy of the collateral description is thus central to her claim. As the trial court explained, Patterson permissibly "raise[d] these issues in the context of challenging Cannon's efforts to prove her claims." PTO at 14 n.129.

On the substance, Cannon fails to show how the parties reached a meeting of the minds of the warrant she claims. The court in *Kotler v. Shipman Associates, LLC*, 2019 WL 4025634 (Del. Ch. Aug. 21, 2019) recognized that "no enforceable agreement [is] created" when, as here, the parties' "understandings of [a contractual] prohibition or permission are incompatible," and the plaintiff "'offer[s] no further evidence indicating' a meeting of the minds." *Id.* at *17 (citations omitted). Cannon simply reiterates that Patterson's could have read all terms of the contract at his leisure, and his regret "over his decision to sign a contract without reading it" is not a valid reason to avoid it. AB at 22. But Cannon's approach would reward her for successful subterfuge. She previously flagged changes, but flagged none on Christmas Day. And her cover message said only this: "Attached please find the

signed stock agreement. If you could counter-sign and return that would be great.”

A1336.

IV. CANNON'S PROFFERED ALTERNATIVE GROUNDS FOR AFFIRMANCE FAIL

Cannon contends that, even if Patterson possessed a valid security interest in the warrant, this Court should affirm because he supposedly effected an unauthorized strict foreclosure under 6 *Del. C.* § 9-620. AB 34–35. That argument fails for three independent reasons.

First, Patterson did not conduct a strict foreclosure. A strict foreclosure occurs only when a secured party states that it is "accept[ing] collateral in full or partial satisfaction of the obligation it secures." 6 *Del. C.* § 9-620(a). In November 2018, Patterson simply exercised his contractual right to transfer the warrant into his name, as the Pledge Agreement expressly permitted. A1737 ¶ 8(a) ("The Secured Party may, after the occurrence … of a default …, *without notice and at its option*, transfer or register the Pledged Assets … into its … name" (emphasis added)); OB 13–14. That transfer did not constitute acceptance of the collateral in satisfaction of the debt under Section 9-620 and did not extinguish Cannon's rights in the collateral. *See Holifield v. XRI Inv. Hldgs. LLC*, 304 A.3d 896, 914 (Del. 2023). Cannon cannot recharacterize that contractual transfer as a strict foreclosure.

Second, even if Patterson had attempted a strict foreclosure, it would have been ineffective. Article 9 provides that "[a] purported or apparent acceptance of collateral" is ineffective unless the statutory conditions for strict foreclosure are satisfied. *6 Del. C.* § 9-620(b). Only an effective acceptance transfers the debtor's

rights in the collateral. *See id.* § 9-622(a). At most, a failed strict foreclosure leaves the parties' rights unchanged. And in that circumstance, Cannon would have had to demand return of the warrant before asserting conversion—which she did not do.

Third, when Patterson disposed of the collateral, he complied with Article 9's notice requirements. *See 6 Del. C.* §§ 9-611, 9-623. Cannon insists that Patterson "presented no admissible evidence" to substantiate that he sold the Romeo shares on May 3, 2022, AB 15, and that "it was undisputed at trial that Patterson provided no notice to Cannon" of the Warrant transfer.[2] AB 39. That is incorrect. Patterson testified that he provided advance written notice of the intended disposition and advised Cannon of her right to redeem the collateral by satisfying the underlying indebtedness. *See* Patterson Tr. A578, A648; Schaeffer Tr. A552-53 (overruling trial objection to A2815); A2811. And Cannon never attempted to redeem the collateral, repay the loan, or prevent the sale. Patterson Tr. A578; PTO at 23–24; A2813; A2815.

[2] The trial court overruled Cannon's objection to the admission of A2815 at trial but sustained the objection in the post-trial opinion, PTO at 25, even though the letter provided notice of collateral disposition—a legal act. *See, e.g., Sutherland v. Sutherland*, 2010 WL 1838968, at *9 n.66 (Del. Ch. May 3, 2010).

V. THE PLEDGE AGREEMENT EXCULPATES PATTERSON

The Pledge Agreement exculpates Patterson from liability "for any acts . . . errors of judgment or mistakes of fact or law, including . . . with respect to the Pledged Assets," absent gross negligence or willful misconduct. OB 13–14; A1737–38 (Pledge Agreement ¶ 17). This clause encompasses any error that Patterson made when, following Cannon's default, he transferred the warrant into his name, sold the shares, satisfied the debt, and remitted the surplus to Cannon.

Cannon's argues that Patterson waived reliance on the exculpation provision. *See* AB 37-38. But the record shows that Patterson repeatedly invoked the provision before trial, during trial, and in post-trial briefing. OB 43–44; A424; A457–458; Patterson Tr. A573; A840–841; A985–986. That was more than enough to preserve the defense. *See Allen v. Scott*, 257 A.3d 984, 992 (Del. 2021).

Nor did Patterson forfeit the defense by not expressly arguing that the clause would apply even if no security interest attached. *See* AB 41–42. Cannon cites *Russell v. State* to suggest that Patterson "present[s] a different theory" on appeal. AB 42 (citing 5 A.3d 622, 627 n.15 (Del. 2010)). But Patterson consistently relied on the exculpation provision as a defense to liability for his actions under the Pledge Agreement. OB 40–44. Patterson also raised exculpation "before, during, and after trial," OB 40, and not as a "vague" or "fleeting" reference, as in Cannon's cases, AB 38 (citing *Del. Acceptance Corp. v. Swain* 2012 WL 6042644, at *4 n.13 (Del. Super.

Ct. Nov. 30, 2012)). A litigant need not anticipate every permutation of a trial court's reasoning to preserve a contractual defense. *See Allen*, 257 A.3d at 992. Nor has Patterson intentionally relinquished that defense. *See Bantum v. New Castle Cty. Vocational-Technical Educ. Ass'n*, 21 A.3d 44, 51 (Del. 2011) (waiver requires the voluntary and intentional relinquishment of a known right).

Cannon's public-policy challenge to the Pledge Agreement's exculpation provision fails because she did not raise it below. *See Ravindran v. GLAS Tr. Co.,* 327 A.3d 1061, 1077 (Del. 2024). And it lacks merit in any event. The cases Cannon cites involve materially different situations—including residential leases and medical malpractice—not negotiated commercial agreements between sophisticated parties. AB 42–43 (citing *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)). In commercial agreements between sophisticated parties, Delaware law favors enforcing contractual allocations of risk, subject only to the rule that a contract cannot insulate a party from liability for intentional wrongdoing.[3] *See Abry P'rs V, L.P. v. F & W Acq. LLC*, 891 A.2d 1032, 1057–58 (Del. Ch. 2006); *GRT, Inc. v. Marathon GTF*

[3] Risk allocation through exculpatory clauses holds special importance in Delaware. *See Williams v. Geier*, 671 A.2d 1368, 1381 (Del. 1996) (noting the Delaware General Corporate Law's embrace of "substantial private ordering" when describing 8 *Del. C.* § 102(b)(7)).

Tech., Ltd., 2011 WL 2682898, at *13–14 (Del. Ch. July 11, 2011) (enforcing negotiated contractual limitations consistent with Delaware's policy favoring freedom of contract). The Pledge Agreement conforms to that rule by expressly preserving liability for gross negligence and willful misconduct. And Cannon does not allege—nor did the trial court find—any gross negligence or willful misconduct here.

Section 9-602 is no help to Cannon either. That provision identifies a discrete set of Article 9 provisions that may not be waived or varied by agreement—none of which is implicated here. *See* 6 *Del. C.* § 9-602. Beyond those provisions, Article 9 preserves the parties' ability to define their rights by contract. *See* 6 *Del. C.* § 9-601(a) (a secured party's rights after default include those provided by agreement of the parties except as limited by Section 9-602). Cannon cites no provision that prohibits parties from agreeing to allocate liability for alleged errors in describing collateral under Section 9-108. Section 9-602 thus provides no basis to invalidate the Pledge Agreement's exculpation clause.

Because Patterson preserved his exculpation arguments, and because Cannon's public-policy and statutory arguments fail, the Pledge Agreement's exculpation provision independently bars any liability finding or damages award.

VI. THE DAMAGES AWARD CONSTITUTES AN ABUSE OF DISCRETION

Even if liability were affirmed, the damages award cannot stand. The award rests on two legal errors.

First, the award imposes liability on Patterson for converting stock he never received. OB 46–48. Cannon cites no authority supporting liability for converting property the defendant never possessed. AB 45–46. Nor does she offer any persuasive response to *Macrophage Therapeutics, Inc. v. Goldberg*, which confirms that conversion requires proof that the defendant actually exercised dominion over the property. 2021 WL 2582967, at *16 (Del. Ch. June 23, 2021). Indeed, in *Macrophage*, the court refused to impose damages based on the possibility that the defendant never possessed the property. *Id.* at *22. Here, there is no question: Patterson only received 121,730 shares, a far cry from the 965, 246 shares underlying the damages calculation. OB 46; PTO at 1.

The trial court's damages theory assumes that Patterson possessed—and could have exercised—a warrant for the full number of shares Cannon now claims. The record refutes that assumption. If Patterson had attempted to exercise the warrant for the full claimed amount, Romeo Systems would have rejected the exercise (otherwise, it would have wreaked havoc on the capitalization table). OB 10–11; Webb Tr. A656; A1735–40. The damages award therefore rests on counterfactual assumption unsupported by the record. *See SIGA Techs., Inc. v. PharmAthene, Inc.*,

132 A.3d 1108, 1131 (Del. 2015) (damages must be proven with reasonable certainty and cannot rest on speculation).

Second, the trial court erred in declining to apply the 180-day lock-up period that would have restricted Cannon's disposition of the shares. Delaware courts require damages to reflect real-world restrictions on value. *See Branin v. Stein Roe Inv. Counsel, LLC*, 2015 WL 4710321, at *5 (Del. Ch. July 31, 2015) (calculating damages based on the actual contractual limitations governing the parties' rights). Here, the trial court's refusal to account for the lock-up restriction materially inflated the damages award.

Cannon speculates that she would not have been subject to a lock-up. AB 46–47. But Patterson presented unrebutted testimony that Cannon would have been subject to the same lock-up restrictions as other significant stockholders. Webb Tr. A664–66; OB 51–52. Cannon did not testify and presented no evidence to the contrary. Cannon's contemporaneous communications confirm that she understood the warrant shares were subject to a lock-up period. OB 47; A2734; A2703; A2726; A2761; A2766.

Cannon cannot complain that she lacked the opportunity to negotiate the lock-up terms. She could have preserved her interest in the warrant by redeeming the collateral—by repaying the loan or by contacting Patterson to arrange repayment. OB 47–48; Patterson Tr. A578. Cannon did neither. Having declined to redeem the

collateral or participate in its disposition, Cannon cannot claim damages as though no lock-up existed.

Because the trial court imposed liability for shares Patterson never possessed and disregarded evidence that the shares would have been subject to a lock-up, the damages award constitutes an abuse of discretion and should be reversed.

CONCLUSION

Defendant Patterson respectfully submits that the trial court's judgment should be reversed.

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