IN THE SUPREME COURT OF THE STATE OF DELAWARE

SUMMIT HEALTHCARE OPERATING PARTNERSHIP, L.P., Plaintiff Below, Appellant, v. BEST YEARS, LLC, Defendant Below, Appellee.	No. 183, 2026 Court Below: The Court of Chancery of the State of Delaware C.A. No. 2025-1258-JTL

PLAINTIFF BELOW, APPELLANT SUMMIT HEALTHCARE OPERATING PARTNERSHIP, L.P.'S REPLY BRIEF ON APPEAL

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INTRODUCTION

This appeal turns on a narrow legal question: what follows from the Court of Chancery's own findings. The Court found that "[t]here was an agreement on the terms," while also finding that the parties understood the final MIPA would not be binding until signed. A117:11-18. Best Years treats the second finding as ending the case. Delaware law treats it as the beginning of the Type II analysis. Summit accepts the Court's historical findings for purposes of this appeal; the error lies in the Court's legal conclusion that those findings amounted to "no agreement" of any kind. A127:8-13. Contract formation is a mixed question of law and fact: factual findings receive deference, but the legal consequences of those findings are reviewed *de novo*. *Shilling v. Shilling*, 332 A.3d 453, 461-62 (Del. 2024).

A Type II preliminary agreement exists in precisely this middle ground. It does not bind the parties to consummate the ultimate transaction; it binds them to proceed in good faith within the agreed framework. *Cox Commc'ns, Inc. v. T-Mobile US, Inc.*, 273 A.3d 752, 761 (Del. 2022); *SIGA Techs., Inc. v. PharmAthene, Inc.*, 67 A.3d 330, 349 (Del. 2013). Best Years cannot avoid that doctrine by emphasizing that the MIPA was never signed. Delaware law does not require a final executed contract—or a formally signed term sheet—before a Type II obligation may arise. Here, the Court found agreement on the transaction terms, Investment Committee sign-off on the business concept, continued drafting and negotiation of the MIPA, resolution of the remaining issues, and communications confirming that no further Investment Committee approval should be necessary because there had been no material changes. A103:24-A104:11; A105:9-A107:4; A117:11-18. Those findings, along with the findings that the agreement would not be binding until it was signed, establish a Type II preliminary agreement.

Best Years' remaining arguments likewise fail. Summit preserved both its Type II theory and its requested remedies. From the outset, Summit sought specific performance requiring Best Years to complete the transaction, and only in the alternative, if specific performance were unavailable, expectation damages. The Complaint and Pretrial Order preserved precisely that sequence. B22; B144.

Best Years also cannot avoid breach by arguing it negotiated in good faith through early August. Summit agrees. The breach occurred when Best Years abandoned the agreed transactional framework, after the parties reached agreement on all terms, for reasons unrelated to any unresolved negotiation. Once the Court found that the parties had agreed on the transaction terms, Delaware law prohibited Best Years from renouncing the deal or abandoning negotiations because of changed business, geopolitical, or strategic considerations. *SIGA*, 67 A.3d at 349 n.85.

The judgment should therefore be reversed, this Court should hold that the parties formed an enforceable Type II preliminary agreement that Best Years breached, and direct the entry of the appropriate expectation remedy—specific performance if available, or expectation damages if it is not.

SUMMARY OF ARGUMENT

1. Best Years' standard-of-review argument is wrong. Contract formation presents a mixed question of law and fact. Summit accepts the Court of Chancery's historical findings, including the findings Best Years prefers, but also including the findings Best Years minimizes: there was "agreement on the terms," and the remaining process was final review and signature. The Court of Chancery's ultimate conclusion that those facts did not establish a Type II preliminary agreement is a legal conclusion reviewed *de novo*.

2. Best Years' preservation argument is wrong. The Type II theory was fairly presented and expressly addressed below. The Court of Chancery received post-trial argument and slide presentations in lieu of post-trial briefs, heard Summit's Type II argument, and ruled on it. Under Rule 8 and recent Delaware Supreme Court precedent, an issue addressed by the trial court is not waived. Summit also preserved its requested remedies. Summit consistently sought specific performance requiring Best Years to complete the transaction. The Complaint and Pretrial Order expressly preserved expectation damages only as alternative relief if specific performance proved unavailable. Best Years' waiver argument therefore attacks a position Summit has never taken.

3. Best Years' breach argument is wrong. Best Years does not dispute that a Type II agreement forbids a party from renouncing the deal, abandoning

negotiations, or imposing conditions outside the agreed framework. It instead reframes abandonment as a "pause." But the trial record and the Court's findings show that, after the parties resolved all of the MIPA terms, Best Years unilaterally stopped the review process for signature and allowed external business, regulatory, and geopolitical considerations to derail the transaction. That conduct breached the Type II good faith duty as a matter of law. Under *SIGA*, expectation damages are available where, as here, the Court's findings show the final agreement would have been consummated but for bad-faith abandonment.

ARGUMENT

I. BEST YEARS CANNOT AVOID *DE NOVO* REVIEW OF THE DELAWARE COURT OF CHANCERY'S LEGAL CONCLUSION THAT NO TYPE II PRELIMINARY AGREEMENT EXISTED.

A. The accepted historical facts are reviewed deferentially; their legal effect is reviewed *de novo*.

Best Years frames this appeal as if Summit were asking the Court to reweigh witness testimony and reject credibility findings. Summit is not. Summit accepts the Court of Chancery's historical findings for purposes of this appeal. That includes the finding that the parties did not intend to be fully bound to consummate the sale until a signed MIPA existed. But it also includes the findings that Best Years prefers not to confront: the parties reached agreement on the terms; the investment committee signed off on the business concept; no further investment committee approval was expected; and the remaining process was ordinary review before final signature. A104:8-13; A105:9-A107:4; A116:20-A117:13.

The question is what Delaware law does with those facts. That question is legal. Delaware law treats contract formation as a mixed question of law and fact. *Shilling v. Shilling*, 332 A.3d 453, 461-62 (Del. 2024). Factual findings, including findings about objective manifestations of assent, receive deference. *Id.*; *Eagle Force Holdings, LLC v. Campbell*, 235 A.3d 727, 735 (Del. 2020). But the legal consequences drawn from those facts are reviewed *de novo*. *DCV Holdings, Inc. v. ConAgra, Inc.*, 889 A.2d 954, 960 (Del. 2005). The same principle applies where the issue is good faith: the underlying historical facts are reviewed for clear error, but the ultimate determination is a legal issue. *DV Realty Advisors LLC v. Policemen's Annuity & Benefit Fund of Chicago*, 75 A.3d 101, 108 (Del. 2013). And where the issue is whether facts satisfy a contractual standard, Delaware courts review the legal conclusion *de novo*. *USA Cable v. World Wrestling Fed'n Ent., Inc.*, 766 A.2d 462, 468 (Del. 2000).

Best Years' contrary rule would create precisely the commercial uncertainty that Delaware's preliminary-agreement doctrine avoids. Parties often require internal approvals, counsel review, and signature mechanics after settling a business framework. Treating those final-contract mechanics as eliminating even the process obligation would make Type II doctrine illusory.

Best Years' answer avoids that distinction. It labels the trial court's ultimate statement - "That's not a Type 1 agreement. That's not a Type 2 agreement. It's no agreement" - as a factual finding. A127:12-13. But the Court made that statement after identifying the legal categories and applying them to the accepted facts. That is a legal conclusion about the effect of the parties' writings, conduct, and agreed framework. It is therefore reviewed *de novo*.

B. Summit's trial presentation explains, rather than undermines, the Type II issue on Appeal

Best Years' "shifting theory" narrative ignores how this issue arose. Summit tried the case first under Delaware's traditional contract-formation principles.

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Summit argued that, when parties have agreed on all substantial terms, the expectation of later formal documentation does not defeat contract formation absent a positive agreement that no obligation exists until execution. That is why Summit relied below on *Universal Prods. Co. v. Emerson*, 36 Del. 553 (1935) and *Shilling*. The argument was straightforward: Best Years never identified a transaction communication in which it affirmatively stated that no obligation of any kind would arise unless and until the MIPA was signed.

That traditional contract-formation focus followed directly from the key June 17/June 19 exchange. Summit made a final $16 million offer and wrote, "[i]f we have a deal, I suggest we skip the LOI phase" and move directly to the MIPA. A100:18-22. Feng responded in the affirmative by text message, "Approved. I will send a formal email later," and then in his formal email that followed, Feng confirmed that Best Years was "aligned on moving forward at the $16 million purchase price" answered Summit's proposition as to whether they had a deal in the affirmative by indicating they were agreeable to proceeding without an LOI. A100:23-A101:10. Best Years reply did not state that no obligation of any kind could arise unless and until the MIPA was signed.

That is why Summit did not lead with the Type II label. Summit understood the June 17/June 19 exchange, followed by the June 20 memorandum, Investment Committee sign-off, counsel-led MIPA negotiations, and resolution of the remaining issues, as establishing a binding agreement—not merely an agreement to negotiate. The Court of Chancery disagreed with that full-contract conclusion, finding that the parties did not intend to be finally bound to consummate the transaction absent a signed MIPA. Summit does not challenge that historical finding on appeal. The point is that, once that finding is accepted alongside the Court's separate finding that "[t]here was an agreement on the terms," A117:11-13, a required application of modern Delaware law should have resulted in the conclusion that there was a Type II preliminary agreement.

Summit also preserved the Type II alternative. At post-trial argument, Summit explained that Delaware recognizes Type I and Type II preliminary agreements and that a Type II agreement carries a good-faith obligation to complete negotiations within the agreed framework. A27:17-A28:9. Summit then made the alternative explicit: "We think that's a Type 1 agreement. If it's not a Type 1 agreement, it's certainly a Type 2 agreement." A29:10-13. In rebuttal, Summit confirmed that it had not abandoned its June 19 position, but that the facts established "at least a Type 2 agreement," which led to a "good-faith, fully negotiated, complete agreement on all terms." A95:20-A96:5.

The Court's ruling is what made the Type II issue dispositive on appeal. The Court accepted Best Years' position that the parties did not intend to be finally bound to close absent a signed MIPA, but it also found that "[t]here was an agreement on the terms." A117:11-13. Summit agrees that combination is not a Type I agreement. However, Summit contends that combination is not "no agreement," under Delaware precedent, it is a Type II preliminary agreement. Namely, the parties were not yet bound to their ultimate contractual objective, but they were bound to proceed in good faith within the agreed framework. Summit therefore is not asking this Court to reject the Court of Chancery's factual findings. Summit is asking this Court to apply *Cox* and *SIGA* to those findings.

C. *Cox* and *SIGA* enforce the exact middle-ground obligation found by the Court's facts.

Delaware recognizes two enforceable preliminary agreements. A Type I agreement is fully binding because the parties have reached consensus on all points requiring negotiation but expect to memorialize the deal in a later document. *Cox Commc'ns, Inc. v. T-Mobile US, Inc.*, 273 A.3d 752, 761 (Del. 2022). A Type II agreement is different. It "does not commit the parties to their ultimate contractual objective" but binds them to negotiate open issues in good faith within the agreed framework. *Id.*; *SIGA Techs., Inc. v. PharmAthene, Inc.*, 67 A.3d 330, 349 (Del. 2013).

That distinction matters here. Best Years spends much of its brief proving a point Summit does not dispute: the parties did not execute a final MIPA, and the Court found they did not intend to be fully bound to close until the MIPA was signed. But that does not answer whether they had bound themselves to the Type II process obligation. If the parties' expectation of a later signed definitive agreement defeated Type II formation, such a ruling would confuse the current state of contract expectations under settled Delaware law. *Cox* and *SIGA* reject that result.

The Court's findings satisfy the Type II framework. First, the parties agreed on the transaction's core economics and framework. Summit made its final $16 million offer and proposed skipping the LOI if they had a deal. A100:18-22. Best Years responded "Approved" by text, followed by an email stating that it was "aligned on moving forward at the $16 million purchase price" and agreeable to proceeding without an LOI as Summit had proposed if the parties had "a deal". A100:23-A101:10; A964. Summit then sent the June 20 memorandum at Best Years' request to support Best Years' internal approval process. A102:18-24.

Second, Union Life did not treat the discussions as free-floating negotiations. On June 26, with the core business terms set forth in the Memorandum in hand, its investment committee authorized the project team to continue negotiating the transaction, which the Court characterized as "sign-off on the business concept." A103:24-A104:11. Best Years then acted under that framework. The parties exchanged drafts of the MIPA, retained and used outside counsel, did not engage in due diligence, negotiated structure and terms, and resolved the final identified issues. A104:18-A105:14. That course of performance is powerful evidence of a preliminary obligation even if the final MIPA still required formal review and signature.

Third, by late July and early August, the parties had progressed beyond open-ended bargaining. The Court found that the parties "had largely agreed on the terms of the transaction by the end of July" and that "[t]here was an agreement on the terms." A116:20-A117:13. On July 31, Summit said it would send a clean execution document. A105:15-18. On August 1, Best Years responded that there "shouldn't be any ***further*** IC approvals needed" because there had been no material changes, and that the matter was "just going through the usual review steps before we get the final signature." A106:22-A107:4 (emphasis added); A1280. Those are not the words of a party still deciding whether to negotiate at all.

Best Years tries to distinguish *Cox*, *SIGA*, *Greentech*, and *Straine* because some involved signed documents or different forms of performance. But the distinction does not establish a rule. *Cox* and *SIGA* define enforceable preliminary obligations by the parties' objective agreement to a framework, not by a mandatory document label. *Greentech* likewise recognized a Type II obligation where the parties agreed on general terms and proceeded within a framework despite later contemplated transaction documents. *Greentech Consultancy Co., WLL v. Hilco IP Servs., LLC*, 2022 WL 1499828, at *12-14 (Del. Super. Ct. May 11, 2022). And *Straine* confirms that Delaware law does not impose a categorical writing requirement on Type II formation. *Straine DM Holdings LLC v. Breault*, 2025 WL 275408, at *5, *9 (Del. Super. Ct. Jan. 22, 2025).

Here, the writings and performance are far stronger than Best Years admits. This was not a casual phone call followed by unilateral hope. It was a written offer, written acceptance language, a written transaction memorandum summarizing key business terms that the parties clarified via later communications, investment-committee action, weeks of counsel-to-counsel document negotiation, resolution of final issues, resulting in an agreement on all terms, and a clean execution draft. If those facts cannot at least create a Type II obligation, then parties can use the signature requirement for a final agreement to escape even the duty to continue in good faith after the deal framework has been settled.

D. Best Years' authority and approval arguments confuse the final MIPA with the Type II obligation.

Best Years repeatedly says that neither Feng nor Yang had authority to bind Best Years to the final MIPA, and that Union Life's OA process had not been completed. Those points do not defeat Summit's Type II argument. Summit is not arguing that Feng or Yang had authority to bind Best Years to the final MIPA. Rather, Summit argues that the Court's findings establish that Best Years, through its objective words and conduct, undertook a Type II obligation to proceed in good faith within the agreed transaction framework.

The Court's own findings make that distinction decisive. The Investment-Committee's approval on June 26 was not final authority to execute a contract, but it was "sign-off on the business concept" and authorization for the project team to continue. A104:8-13. That is exactly the type of corporate approval that supports a process obligation, while leaving final execution to the later OA process. The final signature requirement therefore coexisted with, rather than negated, the Type II duty.

Nor is Best Years helped by saying that Summit supposedly did not know investment-committee approval had occurred. Summit asked on July 31 whether Best Years still needed "final IC approval before signing." A105:17-18; A1197. On Aug 1, Feng answered that there "shouldn't be any ***further*** IC approvals needed" because there had been no material changes. A106:22-A107:4 (emphasis added); A1280. That exchange only makes sense against the background of a prior IC approval for the agreed framework that had been communicated to Summit previously. On June 26 Summit asked Best Years whether the investment committee had met concerning this transaction. Best Years responded, "yes, went well, waiting [for] them to sign." A104:14-17. This later July 31-Aug 1, exchange confirms that the parties were no longer negotiating whether there was a deal framework; they were moving the agreed MIPA through final review.

Best Years' argument would permit a party to accept the benefits of a preliminary framework, direct the other side to skip an LOI, negotiate definitive documents to completion, and then say no obligation ever existed because the final paper was unsigned. *Shilling* confirms that the absence of a signature is not dispositive where objective manifestations otherwise show an agreement; parties may intend to memorialize an agreement later without preventing formation of an enforceable obligation. 332 A.3d at 466-67. That principle applies with particular force to Type II agreements, which by definition operate before final documentation is complete.

The Court of Chancery therefore erred when it treated the parties' shared understanding that the MIPA would not be fully binding until signed as dispositive of whether a Type II agreement existed. The finding that the parties were not finally bound to close does not answer whether they were preliminarily bound to proceed in good faith. Under *Cox* and *SIGA*, the answer is yes.

II. SUMMIT PRESERVED BOTH ITS TYPE II THEORY AND ITS REQUEST FOR DAMAGES.

A. The Type II theory was fairly presented and expressly decided.

Best Years' preservation argument is difficult to square with what happened below. The Court of Chancery dispensed with post-trial briefing and heard post-trial oral argument with slide presentations. Summit presented the Type II theory in that post-trial process. A468-471. The Court then addressed Type II agreements expressly in its ruling, stating that a Type II agreement requires a threshold agreement and concluding that the facts did not meet that standard. A126:22-A127:13. Summit moved for reargument on the same issue, and the Court denied reargument. B160; B261-B262.

That is preservation. Delaware Supreme Court Rule 8 requires that issues be fairly presented to the trial court. The recent *Tesla* decision confirms that a party may preserve an issue through post-trial briefing and argument, and that when the Court of Chancery understands and addresses the issue raised on appeal, the issue is not waived. *In re Tesla, Inc. Derivative Litig.*, 351 A.3d 1005 (Del. 2025)

Best Years says the complaint and pretrial brief did not use the words "Type II." That is not the test. A party need not plead an academic label to preserve the legal consequences of the facts it tried. Summit pleaded and tried that the parties agreed to the transaction framework, that Best Years breached obligations arising from that agreement, and that Summit was entitled to relief. The Court then expressly decided the Type II issue. Best Years therefore cannot credibly claim surprise or waiver.

Best Years' reliance on waiver cases involving arguments raised at the "last possible instant" therefore misses the mark. The purpose of preservation is notice and an opportunity for the trial court to decide the issue. Both existed; the appeal asks this Court to review a ruling the Court of Chancery actually made.

Nor did Summit sandbag Best Years. The Type II issue arose from the Court's own view of the facts: agreement on terms, but no final binding MIPA until signature. Once the Court focused on that middle ground, Type II doctrine became the governing legal framework. Best Years argued against it below, the Court ruled on it, and Best Years devotes substantial space to it on appeal. That is the opposite of an unpreserved issue.

B. Summit preserved its request for specific performance and, alternatively, expectation damages.

Best Years' damages waiver argument also misstates the record. Summit's complaint sought an order for specific performance requiring Best Years to close the transaction and, in the alternative, monetary damages plus interest if specific performance was unavailable. B22. In its Motion for Expedited Proceedings filed with the Complaint, Summit sought an initial expedited trial to address only the request for specific performance, leaving the issue of damages for later. B27. The Court's order granting expedition and the scheduling order entered by the Court recognized that the trial would only address Summit's request for specific performance. B144. The pretrial order likewise identified damages as an issue for later determination if specific performance were unavailable. In the statement of issues, Summit asked whether the parties reached a binding agreement, whether Best Years breached, whether Summit was entitled to specific performance, and, in the alternative and only to the extent specific performance was unavailable, what amount of damages Summit was entitled to recover. B144. The pretrial order further explained that the expedited trial was scheduled to address Summit's request for specific performance and that damages would become an issue only if specific performance were not awarded. B144-B145.

That reservation defeats waiver. Summit did not refuse to pursue damages; it pursued specific performance first, as expedited equity practice permitted, while preserving damages for a later phase if specific performance were denied. Best Years' contrary theory would force a plaintiff in an expedited specific performance trial to present a full damages case, along with experts, simultaneously or forfeit damages forever. That is not how expedited Chancery practice works, and it is not what the pretrial order said.

Best Years' position also would create a procedural trap in expedited equity cases. A plaintiff seeking specific performance should not lose damages merely because it did not present an expert case that the pretrial order reserved for later.

That is especially true here, where Best Years had notice from the complaint and pretrial order that damages remained alternative relief.

Best Years emphasizes that Summit did not present expert damages testimony at trial. But no damages amount was being tried. Summit's discovery response that damages discovery was outside the expedited trial and premature, B462, was consistent with the pretrial order's reservation. Summit has consistently maintained that specific performance is the appropriate remedy because monetary damages alone cannot provide Summit the benefit of the bargain. The Complaint sought an order requiring Best Years to consummate the transaction and requested monetary damages only if specific performance proved unavailable. B22. The Pretrial Order preserved the same sequence. B144. Thus, Best Years' assertion that Summit abandoned specific performance or transformed this into a damages case is simply incorrect.

Once this Court holds that the Court of Chancery's findings establish a Type II preliminary agreement, and that Best Years breached that agreement by unilaterally abandoning the agreed framework, the proper remedy on this trial record is specific performance of the transaction. That relief would not treat the Type II agreement as a fully executed MIPA from inception; it would give Summit the expectation interest Delaware law protects where the record shows the final agreement would have been reached but for the breaching party's bad-faith conduct.

SIGA, 67 A.3d at 351 (Del. 2013). Here, the Court found that the parties had agreed on the terms, resolved the final MIPA issues, moved into final-signature review, and that the transaction stalled only because Best Years abandoned the framework for reasons unrelated to any open deal term. A104:18-A107:4; A117:3-13; A120:4-7. Those findings support specific performance.

Summit's reference to expectation damages is not a concession, rather it is an alternative request only. If, for reasons not apparent from the existing record, this Court concludes that specific performance cannot be granted, then Summit is entitled to expectation damages under *SIGA*, with any further proceedings limited to quantifying or implementing that monetary alternative. *SIGA*, 67 A.3d at 351.

III. BEST YEARS BREACHED THE TYPE II AGREEMENT, ENTITLING SUMMIT TO APPROPRIATE RELIEF

A. A "pause" for reasons outside the agreed framework is abandonment.

Best Years' breach section does not dispute the rule that a party to a Type II agreement may not renounce the deal, abandon negotiations, or insist on conditions outside the agreed framework. *SIGA*, 67 A.3d at 349 n.85; *Cox*, 273 A.3d at 761. Instead, Best Years says it negotiated in good faith through early August, then "paused" the transaction because of geopolitical circumstances and regulatory concerns, and terminated only after Summit filed suit. Ans. Br. at 39-41.

That is not a defense to breach, but rather an admission of the breach. Summit acknowledges that Best Years participated in the drafting and negotiation process through early August. But the duty did not end when the MIPA terms were finalized. That is when the Type II duty mattered most. Once the parties were at final review and signature, Best Years could not abandon the agreed framework because macroeconomic conditions, Sino-U.S. relations, unspecified regulatory concerns, or internal strategy made the transaction less attractive.

The Court's findings establish exactly that abandonment. On August 4, Yang sent the MIPA for legal and compliance review and stated that if there were no amendments she would submit the signing application in the OA system. B467. Before that review proceeded, on August 5, Yang's supervisor told her to pause the transaction. A293:16-A294:1. Internally, Union Life later recorded that, as of early August, the lawyers had gone through multiple rounds of revisions and the terms were largely finalized, but Union Life decided to suspend the sale because of improved Sino-U.S. relations and adjustments to company strategy. A1298. The Court found the transaction stalled because Union Life grew concerned about macroeconomic and geopolitical factors and had regulatory interactions. A107:13-18. It later described the reason as likely a combination of and world events moving in Best Years' favor and against Summit and regulatory involvement. A120:4-7.

None of those reasons concerned an unresolved MIPA term. None reflected a failure by Summit to negotiate in good faith. None identified a drafting problem, a diligence issue, a condition within the parties' agreed framework, or a material change proposed by Summit. They were external reasons to walk away from a deal Best Years no longer wanted.

The timing confirms the breach. Through August 4, Best Years advanced the MIPA toward consummation of the transaction. After the pause instruction, there were no renewed comments, no proposed edits, no request for information, and no term Best Years asked Summit to negotiate. Good-faith negotiation requires engagement with the agreed framework; it does not permit silent nonperformance.

Calling that conduct a "pause" does not change its legal character. A Type II party cannot avoid breach by placing the transaction on an indefinite internal hold while telling the counterparty to wait. The point of *SIGA*'s rule is to prevent precisely that conduct: a party may not abandon the agreed framework because later events make the bargain less appealing.

B. Best Years' concealment confirms bad faith.

Best Years also minimizes the concealment that followed the internal pause. After the review was stopped, on Aug 12, Best Years told Summit that Union Life was still reviewing the transaction. A1282. On August 31, after inquiry from Summit for an update on the MIPA signing, Best Years replied, not much to update, I will check again Tuesday. A1284. On September 3, Best Years informs Summit that approval was delayed. A1285. The Court credited that those communications were misleading enough to call them a "white lie." A120:8.

The record shows that Best Years stopped the review process internally, did not resume substantive negotiations, did not identify any open deal term, and continued to let Summit believe that the transaction remained in ordinary review. By September, Feng told Summit that approval had been delayed because "regulation got stricter" and that the regulator wanted to pause the sale. A108:17-23. Feng, in a text message to Summit expressed that the deal "could drag on forever—or never come back at all" and that Best Years will "follow the regulator's direction and suspend the deal." A1287. Best Years now says it did not finally terminate until Summit sued. But by then, Best Years had already abandoned the Type II process.

A party cannot secretly stop performing, conceal the stoppage, wait for the other side to file suit, and then claim that suit - rather than the abandonment - ended the deal.

Best Years' own framing proves the point. If negotiations had truly been ongoing, Best Years would identify the term being negotiated, the draft being revised, or the agreed condition that remained unresolved. It identifies none. Litigation did not cause the breach; it exposed it.

Best Years' reliance on business and regulatory concerns is also misplaced. A Type II agreement does not require irrational conduct or blind disregard of law. If a regulator legally prohibited the transaction, or if an agreed closing condition failed, the analysis might be different. But the Court did not find that any regulator prohibited closing. It found that regulatory involvement was part of a broader mix of external reasons, including improved Sino-U.S. relations and internal strategy, that caused Union Life to reconsider a deal whose terms were already finalized. A120:4-7; A1298. That is abandonment outside the agreed framework.

CONCLUSION

For the foregoing reasons, Summit respectfully requests that this Court reverse the judgment of the Court of Chancery and hold that the parties formed an enforceable Type II preliminary agreement, that Best Years breached that agreement by abandoning the agreed transaction framework, and that Summit is entitled to its expectation remedy. Summit further requests that this Court direct entry of specific performance in accordance with the MIPA terms. Alternatively, in the event this Court remands this case for a remedy to Summit consistent with the Court's opinion, then Summit respectfully requests that the Court hold the Vice Chancellor may award specific performance to Summit, or if specific performance is not available, then Summit shall be entitled to recover contract expectation damages.

Dated: July 10, 2026

Respectfully submitted,

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