EFiled: Apr 22 2026 03:43PM EDT
Filing ID 79119748
Case Number 87,2026

IN THE SUPREME COURT OF THE STATE OF DELAWARE

LARRY SERUMA, NILE CAPITAL MANAGEMENT, LLC, NILE GLOBAL FRONTIER FUND LLC and KN AGRI LLC, Defendants, Counter-Plaintiffs, Third-Party Plaintiffs-Below/Appellants, v. KURAMO CAPITAL MANAGEMENT, LLC, KURAMO AFRICA OPPORTUNITY MASTER FUND II, L.P., KURAMO AFRICA OPPORTUNITY MASTER CO-INVESTMENT VEHICLE III, LP and KURAMO AFRICA OPPORTUNITY AGRIBUSINESS VEHICLE, LP, Plaintiffs, Counter-Defendants-Below/Appellees, v. KURAMO OPPORTUNITY OFFSHORE FUND II GP, LTD, Third-Party Defendant-Below/Appellee.	No. 87, 2026 Court Below: Court of Chancery of the State of Delaware C.A. No. 2021-0323-KSJM

<u>APPELLANTS' CORRECTED OPENING BRIEF</u>

OF COUNSEL:

Andrew K. Glenn
Trevor J. Welch
George L. Santiago
GLENN AGRE BERGMAN & FUENTES LLP
1185 Avenue of the Americas
22nd Floor
New York, New York 10036
(212) 970-1600

Eric A. Veres (#6728)
Ben Lucy (#7324)
ABRAMS & BAYLISS LLP
20 Montchanin Road, Suite 200
Wilmington, Delaware 19807
(302) 778-1000

Attorneys for Defendants, Counter-Plaintiffs, Third-Party Plaintiffs-Below, Appellants Larry Seruma, Nile Capital Management, LLC, Nile Global Frontier Fund LLC, and KN Agri LLC

Dated: April 22, 2026

<u>TABLE OF CONTENTS</u>

<u>Page</u>

TABLE OF AUTHORITIES

Page(s)

Cases

Statutes

Other Authorities

NATURE OF PROCEEDINGS

This appeal presents the question whether sophisticated fund investors are bound by the plain terms of their contracts—and whether fiduciaries may exercise the management rights those contracts expressly confer. The Court of Chancery's decision incorrectly answered no, excusing admitted contractual breaches based on a "modification by conduct" theory unsupported by clear and convincing evidence, and instead imposing liability on the very party holding and exercising the exclusive contractual management rights unambiguously vested in him. In so doing, the decision below disregards settled principles of contract interpretation, misapplies the entire fairness standard, and fashions an extraordinary in-kind redemption remedy contravening the Delaware LLC Act and the parties' negotiated contracts.

Appellants Larry Seruma, Nile Capital Management, LLC ("NCM"), Nile Global Frontier Fund LLC ("NGFF"), and KN Agri LLC ("KN Agri" and, together with NCM and NGFF, the "Funds") managed a series of Delaware limited liability companies through which they invested in Africa—principally Plantations et Huileries du Congo S.A. ("PHC"), a palm oil producer in the Democratic Republic of the Congo ("DRC"). The Kuramo Parties invested in the Funds. The governing agreements unambiguously vested exclusive investment management authority in the Funds: the Managing Member holds "absolute power" to carry out the objectives and purposes of the Fund, while non-managing members—including the Kuramo

Parties—"shall have no authority or right to act on behalf of [the fund] in connection with any matter." The Kuramo Parties admitted they had no authority to manage any of the Funds or PHC.

In late 2019, Feronia Inc., a Canadian company through which the parties originally invested in PHC, became insolvent. Seruma spearheaded a restructuring in which Feronia KNM, a wholly-owned subsidiary of KN Agri, acquired PHC's equity in a bankruptcy sale at a substantial discount. On September 3, 2020, the Supreme Court of British Columbia approved the sale and vested ownership of PHC "absolutely" in Feronia KNM, "free and clear of and from any and all security interests … or other financial or monetary claims." ("Vesting Order"). The Kuramo Parties congratulated Seruma for a "job well done."

The parties then negotiated post-bankruptcy ownership terms: the Funds would contribute Mpala (a Ugandan cattle ranch valued at $22.5 million) and over $1 million in transaction costs; and the Kuramo Parties would fund a $15 million bridge loan intended to be used, and in fact used, to fund PHC's operations and, ***upon full funding***, convert into a 40% non-managing membership interest in KN Agri. The result would be a 60/40 (Nile/Kuramo) split of KN Agri, documented in contemporaneous writings, including notarized documents sent to PHC's lenders. Moreover, Kuramo's principal, Kamal Pallan, acknowledged this arrangement in a recorded telephone call, stating that Nile would hold a "majority" of KN Agri based on the Mpala contribution.

The Kuramo Parties breached their obligations. They funded only $9.75 million of the promised $15 million and never converted the bridge loan to equity. Instead, they sought to recover the loan proceeds in this litigation—a position fundamentally inconsistent with their claim to own equity in PHC.

When a dispute arose over PHC's Director General appointment in early 2021, the Kuramo Parties—acting in concert with their co-conspirator, Mafuta—(discussed below)—seized control of PHC through fraudulent misrepresentations and extra-legal machinations. Hours before a PHC board meeting, they sent a letter to PHC's board falsely claiming to be the "99% beneficial owners of Feronia KNM" and characterizing Seruma as merely "an employee." They later sent PHC's board—on fabricated Feronia KNM letterhead—a governance chart repeating this misrepresentation. Pallan conceded at trial that these communications were intended to falsely portray that Kuramo controlled Feronia KNM.

The Kuramo Parties and Mafuta only escalated from there. They sabotaged a supply contract Seruma negotiated that would have generated surplus cash flow sufficient for PHC to repay the bridge loan owed to Kuramo, which would have deprived Kuramo of its "main lever" over the Funds. They orchestrated efforts to have Seruma arrested, criminally prosecuted, and deported from the DRC to prevent him from exercising his PHC governance rights. As one Kuramo associate wrote: "I am sure that [Kuramo principal] Wale [Adeosun] and you will do the needful to get our 'friend' ou[t] of the way. Once he is out of the country, I suggested to [their co-conspirator, Mafuta] that we make sure [Seruma] is not accepted back in." The co-conspirators explicitly sought to "[i]ncriminate and discredit" Seruma, recognizing that only by removing him could they acquire control over an enterprise to which they admittedly had no legal entitlement.

After a five-day trial, the Court of Chancery rejected the Funds' claims for breach of contract, tortious interference, and civil conspiracy. The court reasoned that any breach of the exclusive management provisions was, in effect, excused because the parties' "course of conduct" that somehow modified the governing agreements to surrender the Funds' exclusive management authority to the Kuramo Parties. Instead, the court found that Seruma breached his fiduciary duties by misappropriating the Kuramo Parties' "beneficial interest" in PHC, and that the Funds had breached the bridge loan. The court issued a final judgment ordering the Funds, among other things, to "immediately redeem to Kuramo, in-kind, free and clear, all direct and indirect interests held by Nile in PHC" (an asset the Kuramo Parties valued at $321 million in 2021), and pay back the bridge loan with interest.

The net result of the judgment is this: the Kuramo Parties (i) directly own 100% of PHC's public equity (far more than the indirect 40% interest they bargained for); and (ii) have a judgment for the return with interest of every post-bankruptcy penny they funded to support PHC's operations. The Funds, by contrast, have been stripped of their right to manage and their ownership interests in PHC, as well as tens of millions of dollars in management fees that the Kuramo Parties estimated to be $190 million, have partly collected, and plan to keep for themselves. That result is not only legally erroneous; it is manifestly unjust.

But the stakes of this appeal extend beyond the parties. Delaware law prizes predictability. Contracting parties structure transactions around the settled understanding that exclusive management provisions will be enforced—not judicially rewritten through after-the-fact "modification by conduct" theories untethered to the demanding evidentiary standard such claims require. Controllers and minority investors alike rely on the principle that entire fairness will be triggered only where a genuine conflict exists—not where a fiduciary exercises contractual authority the parties expressly conferred. And alternative-entity investors depend on the rule that equity will not rewrite bargained-for allocation provisions to award remedies the LLC Act and governing agreements foreclose.

The decision below departs from each of these principles. It rewards parties who seized control through fraud and self-help while penalizing the party who held—and sought to exercise—the exclusive management rights the contracts conferred. It permits sophisticated fund investors to obtain through judicial decree what they declined to secure through negotiation. And it introduces market uncertainty into the interpretation of management provisions and redemption rights.

This Court should reverse the judgment below and remand with instructions to enter judgment in favor of the Funds.

PROCEDURAL HISTORY

In May 2023, trial proceeded over five days before Chancellor McCormick.

On April 30, 2024, the trial court issued its post-trial memorandum opinion ("Opinion"), finding, among other things, that Seruma breached his fiduciary duties to the Kuramo Parties and that KN Agri breached the bridge loan. The court rejected the Funds' counterclaims for breach of contract, tortious interference, and conspiracy. The court initially ordered equitable rescission to restore the parties to what the trial court described as the pre-dispute bargain.[1] At the trial court's invitation, the parties filed letter briefs identifying issues not addressed in the Opinion.[2] The trial court issued letter decisions denied Nile's requests entirely and awarded Kuramo in-kind redemption of the PHC and GenAfrica investments.

On January 29, 2026, the court entered a final order and judgment ordering the Funds to transfer to Kuramo all direct and indirect interests in PHC, Feronia KNM, GenAfrica, and related entities, leaving the Funds with no remaining interest or claim to those investments. The final judgment also awarded Kuramo CIV III $9.75 million in damages on the bridge-loan claim, plus interest, totaling $15,098,247 as of December 31, 2025.

This appeal followed.

---

[1] A768, ("Opinion"), at 89-93.

[2] A869-73; A864-67.

SUMMARY OF ARGUMENT

The decision below rests on multiple legal errors warranting reversal.

1. The trial court erred in excusing the Kuramo Parties' admitted breaches of the KN Agri and NGFF Agreements through a "modification by conduct" theory. The KN Agri Agreement requires written consent for any amendment. There was none. Delaware courts "disfavor" modification by conduct and require clear and convincing evidence sufficient to "leave no doubt of the intention of the parties to change what they previously solemnized by formal document." The evidence the trial court cited—Kuramo's participation in discrete activities at the managing member's invitation—falls far short of that demanding standard. Participation by invitation is not the same as surrendering exclusive management authority. When the Kuramo Parties first asserted the unilateral right to dictate PHC's governance, Seruma objected immediately and in writing. That objection refutes any agreement to waive control.

2. The trial court erred in applying the entire fairness standard to the restructuring transactions. Delaware's LLC Act permits parties to eliminate fiduciary duties entirely, and the governing agreements here exercised that latitude: the Nile Capital Agreement shields discretionary acts from any duty of loyalty and, for conflicted transactions, supplies its own process-oriented balancing standard requiring the manager to consider the relative interests of all parties—a standard

materially different from entire fairness's objective, burden-shifted inquiry into fair dealing and fair price; and the KN Agri Agreement renders the managing member's valuation judgments binding on Kuramo. The trial court misapplied the governing standard. It assumed a duty, reached for entire fairness, and found a breach—a sequence the contractual architecture forecloses at the first step.

3. Even under entire fairness, the trial court's fair dealing analysis was infected by demonstrable mischaracterizations of the record. The court found "no negotiation" concerning the 60/40 split—even though the record includes Pallan's recorded acknowledgment that Nile would hold a "majority" of KN Agri, organizational charts reflecting the 60/40 split that the Kuramo Parties notarized and sent to PHC's lenders, deal counsel's contemporaneous written summary and subsequent testimony, and Kuramo's proposal to pool Mpala with PHC. The Kuramo Parties did not receive their 40% interest in KN Agri only because they reneged on their funding commitment, refused to convert the bridge loan to their 40% equity position, and seized PHC through fraud and self-help—not because of any action or inaction by Seruma.

4. The trial court erred in finding the Kuramo Parties' tortious interference with the Funds' contractual rights "justified." Under Restatement (Second) of Torts § 767, the nature of the actor's conduct is a "chief factor" in assessing justification. Physical violence, fraudulent misrepresentation, threats of illegal conduct, economic

coercion, and bad-faith litigation are independently wrongful and preclude justification. The Kuramo Parties' conduct maps directly onto these categories: fraudulent misrepresentations to PHC's board and lenders that Kuramo owned "99%" of Feronia KNM; attempts to have Seruma arrested, criminally prosecuted, and deported; bad faith civil and criminal lawsuits in multiple jurisdictions; sabotage of PHC's commercial relationships; and wielding the bridge loan as "the main lever" to coerce acquiescence. There is no justification for self-help of this nature.

5. The trial court's in-kind redemption remedy contravenes Delaware law and the parties' agreements. An LLC member has "no interest in specific limited liability company property" (6 *Del. C.* § 18-701) and "no right to demand and receive any distribution from a limited liability company in any form other than cash" (6 *Del. C.* § 18-605). The governing agreements reinforce this default: Section 8.7 of the Nile Capital Agreement provides that a "Member has no interest in specific Company property"; the NGFF Agreement provides that "[n]o Member shall, however, have the right to receive distributions in property other than cash." The trial court inverted the statutory framework, requiring the agreements to "explicitly prevent" in-kind redemptions rather than "explicitly authorize" them.

STATEMENT OF FACTS

A. The Parties, Their Relationships, and Their Investments

Larry Seruma is the Managing Member of NCM, which is the Managing Member of NGFF, which is the Managing Member of KN Agri, which is a "series" LLC with separate membership interests and assets in Series A, B, and C.[3] The Funds, which are independent, marked to market, pooled investment vehicles, invested in Africa, including in (i) PHC, a palm oil producer in the Democratic Republic of the Congo ("DRC"), (ii) GenAfrica Asset Managers Ltd ("GenAfrica"), a Kenyan asset manager, and (iii) Mpala, a 10,000-acre cattle ranch in Uganda.[4]

KCM and the funds it manages (collectively, "Kuramo Funds") are led by Chairman/CEO Wale Adeosun and COO Kamal Pallan.[5] The Kuramo Funds are sophisticated private fund investors that invested in NGFF and KN Agri.

The governing agreements are (i) Nile Capital Agreement,[6] (ii) NGFF Agreement,[7] (iii) Series P Subscription Agreement,[8] (iv) KN Agri Agreement,[9] and

[3] 6 *Del. C.* § 18-215(a); A2187; A562/1274 (Lamek).

[4] A374-75/763-64 (Seruma).

[5] A129-30/8-9, A242/343 (Pallan); A320/546 (Adeosun).

[6] A2967.

[7] A2824.

[8] A3776.

[9] A2186.

(v) KKM Shareholder Agreement, as modified by the KKM Letter Agreement,[10] which vested NCM and Seruma with exclusive control over all activities of NCM, NGFF, and KN Agri, and relegated the Kuramo Funds to non-managing economic interests. Argument, Section I. Thus, NCM had exclusive authority to manage KN Agri's wholly owned subsidiary, Feronia KNM SRL ("Feronia KNM"), and its sole investment: 76% of PHC's Class A shares.[11] As the majority owner of PHC's Class A Shares, Feronia KNM (contractually, NCM/Seruma) had broad authority over PHC's corporate governance.[12]

The Kuramo Parties, by contrast, admittedly had no authority to manage NGFF, KN Agri, Feronia KNM, or "to set the governance structure for PHC."[13]

B. The PHC Investments

Before its 2020 restructuring, Feronia Inc. owned a controlling interest in PHC (76% of PHC's Class A Shares).[14] In 2017 and 2019, the parties invested $26.6 million in Feronia Inc.'s equity as an indirect investment in PHC.[15] By late 2019, Feronia Inc. and PHC were insolvent. In the Canadian bankruptcy sale, all equity in

---

[10] A3001.

[11] A562/1274-75 (Lamek).

[12] A2230 §§ 6.2, 9.2.

[13] A3015, A3026 (Interrog. Resps. 23, 56-57); A272/462 (Pallan); A274/470 (Pallan); A281/497 (Pallan).

[14] Opinion at 3; A107, ¶¶ 38-39.

[15] A3849; A382/793-95 (Seruma); A244/352 (Pallan).

Feronia Inc. (including that owned by Kuramo and Nile) was extinguished, and Feronia KNM purchased Feronia Inc.'s PHC stock.[16]

1. The 2017 Equity Investment

In October 2017, NGFF and Kuramo Africa Opportunity Agribusiness Vehicle, LP ("Kuramo Agri Vehicle") collectively invested $17.5 million in Feronia Inc.'s equity.[17] Kuramo granted non-party Mafuta Investment Holdings Ltd. ("Mafuta") a "15 percent ownership interest" with no capital contribution.[18] Mafuta's CEO, Kalaa Mpinga, is the son of a former DRC Prime Minister.[19] Adeosun and Pallan hoped to exploit Mpinga's political connections in support of the PHC investment.[20] To consolidate their investments, Kuramo Agri Vehicle, NGFF, and Mafuta (*i.e.*, the KKM Consortium) contributed their Feronia Inc. shares to KKM2.[21]

---

[16] Opinion at 38 & n.212; A3160 ¶ 107.

[17] A378/776-77 (Seruma).

[18] A379/383 (Seruma).

[19] A248/365 (Pallan).

[20] A434/880 (Seruma); A248/365 (Pallan).

[21] A378/777 (Seruma); A248/365 (Pallan).

2. The 2019 Equity Investment

In June 2019, KN Agri invested $9.1 million in Feronia Inc. stock,[22] funded by Kuramo CIV III and NGFF, which contributed $8.9 million and $250,000, respectively.[23] In exchange, Kuramo CIV III received a Series B non-managing membership interest ("Series B") in KN Agri, whose sole asset was stock in Feronia Inc.[24] The KKM Consortium again contributed their Feronia Inc. shares to KKM2.

3. The Restructuring

By late 2019, Feronia Inc. and PHC were insolvent.[25] Feronia Inc.'s board, including Seruma, Pallan, and Mpinga,[26] authorized an "immediate restructuring."[27] Feronia Inc.'s "disinterested directors" supervised the process to ensure it was "independent and transparent and [had] integrity."[28]

Seruma retained DLA Piper (Canada) LLP ("DLA") to represent KN Agri and KKM2 in the restructuring.[29] DLA restructuring partner Edward Lamek provided

---

[22] A382/792-95 (Seruma); A244/352 (Pallan).

[23] A382/794 (Seruma); A244/352 (Pallan).

[24] A383/796 (Seruma); A563/1278-79 (Lamek).

[25] A1206; A421-22/828-32 (Seruma); A563/1280 (Lamek); A250/375-76 (Pallan).

[26] A1210 ¶ 15.

[27] A384/802 (Seruma); A386/808-09 (Seruma).

[28] A421/828 (Seruma).

[29] A1198; A423/836 (Seruma); A561/1272 (Lamek); A171/173 (Pallan).

contemporaneous progress reports to Seruma and Pallan.[30] Kuramo and Mafuta were separately represented by Fasken Martineau DuMoulin LLP .[31]

To facilitate the bankruptcy sale, KKM2, and Feronia Inc., executed a restructuring support agreement ("Support Agreement")[32] contemplating a $15 million bridge loan from Kuramo to KN Agri to fund PHC's operations ("Bridge Loan"), and the KKM Consortium's agreement to bid for Feronia Inc.'s assets ("Purchase Agreement"), including its PHC shares ("Purchased Assets"), for at least $500,000 ("Asset Sale").[33] To fund the Bridge Loan, Kuramo CIV III committed to lend KN Agri up to $15 million, which provided a back-to-back loan to PHC.[34] Seruma formed Feronia KNM as a KN Agri subsidiary to be the purchaser.[35]

On July 23, 2020, Feronia Inc. filed bankruptcy.[36] On August 14, 2020, Feronia Inc. filed a Notice of Application for approval of the Purchase Agreement.[37] On September 3, 2020, the Supreme Court of British Columbia ("Canadian Court")

---

[30] A562/1273 (Lamek); A251/378-80 (Pallan); A2510; A560-A570/1268-1307 (Lamek); A2501; A570-75/1307-25 (Lamek).

[31] A1218-1221; A542/1195 (Seruma).

[32] A1081.

[33] A1218-19 ¶ 51; A1092.

[34] A1139; A272/463 (Pallan); A419/822-23 (Seruma).

[35] A561-62/1272-73 (Lamek); A2623; A2289; A1127.

[36] A1186; A1190.

[37] A255/394 (Pallan).

issued the Approval and Vesting Order ("Vesting Order") approving the sale to KKM2's "permitted affiliate, Feronia KNM."[38] The Vesting Order provides:

> all of [Feronia Inc.'s] interest in and to the Purchased Assets described in the Sale Agreement [*i.e.*, PHC] shall vest absolutely in [Feronia KNM], free and clear of and from any and all security interests … or other financial or monetary claims.[39]

On September 15, 2020, the Canadian Court issued an opinion that the proposal trustee's sale process and terms were fair and reasonable.[40] As a result, all pre-bankruptcy equity investments in Feronia Inc. were admittedly "wiped out,"[41] and the ownership of PHC vested "absolutely" in Feronia KNM.[42] None of the Kuramo Parties objected.[43] To the contrary, Adeosun and Pallan congratulated Seruma on a job well done.[44]

The parties agreed that Kuramo, Nile, and Mafuta would be issued membership interests in Feronia KNM and, indirectly, become economic stakeholders in PHC.[45] The parties agreed that post-restructuring stakes would

---

[38] A2289.

[39] A2290 ¶ 2.

[40] A1892.

[41] A245/355 (Pallan); A563/1279-80, A566-67/1292-93 (Lamek).

[42] A2290 ¶ 2.

[43] A1901 ¶ 28.

[44] A2080; A255-56/396-97 (Pallan).

[45] A424/841 (Seruma).

reflect new capital contributions—not their legacy interests in Feronia Inc as those interests were extinguished (along with those of all other Feronia Inc. shareholders).[46]

Under Seruma's management, the Funds' equity grew remarkably. In the restructuring orchestrated by Seruma, the Funds acquired PHC in bankruptcy for $500,000,[47] which the Kuramo Parties acknowledged had grown in value to $321 million by September 2021,[48] and which resulted in an increase in the Funds' ownership of PHC's public equity from 38% to 100%. Despite the extraordinary value generated under Seruma's leadership, the Funds have not received any management or incentive fees relating to PHC whatsoever.[49] By contrast, Kuramo and Mafuta—who neither paid to purchase PHC out of bankruptcy, nor funded restructuring expenses—estimated they would collect $190 million in fees that rightfully belong to the Funds.[50]

4. The Contemplated 60/40 (Nile/Kuramo) Split of KN Agri

Nile and Kuramo agreed that they would (i) pool the Mpala and PHC investments in KN Agri, and (ii) split their interests in KN Agri 60/40

---

[46] A564/1284 (Lamek).

[47] A1223 ¶ 71.

[48] A3851.

[49] A552/1236 (Murray); A3165 ¶ 130.

[50] A3113 ¶¶ 186-92 & Figure 8.

(Nile/Kuramo).[51] Because the parties were "effectively starting a new company with new money,"[52] the 60/40 split would reflect the parties' new contributions to KN Agri (not their historical, worthless Feronia Inc. investments). Specifically, Nile contributed Mpala (a $22.5 million asset) "together with in excess of $1,000,000 of PHC restructuring transaction cost funding, in return for a 60% interest in the KN Agri Fund."[53] Kuramo agreed to fund a $15 million Bridge Loan that would be converted into 40% of non-managing membership interests in KN Agri.[54]

Numerous documents and an audio recording corroborate this agreement.[55]

On September 11, 2020, Pallan sent Seruma a "Kuramo Proposal for KN Food Fund," including a proposal to "Restructure of Kuramo investment in KKM into KN Agri."[56] "Kuramo was proposing to channel all their Feronia-related assets into KN Agri fund."[57] Pallan himself proposed "including Mpala" in KN Agri.[58] The "chart"

---

[51] A2501.

[52] A564/1284 (Lamek).

[53] A566/1290 (Lamek).

[54] A1883; A1881; A2067; A2081; A245/356, A264/430, A271/458 (Pallan).

[55] A1886, A2067, A2072, A2082, A2131, A2135.

[56] A1888; A426/849-50, A539-40/1182-87 (Seruma).

[57] A426/848 (Seruma).

[58] A1888 ("including Mpala"); A285/516 (Pallan); A426/849-50 (Seruma).

in the "Kuramo Proposal for KN Food Fund,"[59] depicts the Kuramo Agri fund and the NGFF merged into one entity.

On September 16, 2020, Pallan and Seruma discussed the "Kuramo Proposal" to hold PHC and Mpala in a "Food Fund,"[60] which Pallan acknowledged would result in Nile holding a "majority" of KN Agri based on the Mpala valuation.[61] Referring to his own "Kuramo Proposal for KN Food Fund" during a September 16, 2020 telephone conversation, Pallan told Seruma:

> I sent you a structure chart basically saying that our proposal for [supporting KN Agri][62] is essentially where we route all of our Kuramo assets into Kuramo Agri, KN Agri … ***So that essentially you have, you know, a majority of Agri assets. You have the [M]pala ranch***.[63]

Pallan's acknowledgement that Nile would own a "majority" of KN Agri based on Nile's contribution of Mpala was consistent with the acknowledged values of Mpala

---

[59] A1889 (chart of ownership).

[60] A1888; A426/849-50, A539-40/1182-87 (Seruma).

[61] A1928; A1920; A1941; A1983 (audio recording); A427/854 (referencing A1889), A428/856-57, A540/1186-87 (Seruma).

[62] A1995; A540/1185-87.

[63] A1928-29A1917 (call transcript); A427/854, A428/856-57, A540/1186-87 (Seruma); A1889 (chart in September 11, 2020 proposal).

and PHC in September 2020, *i.e.*, (i) $500,000 for PHC,[64] and (ii) $22.5 million for Mpala.[65]

On October 27, 2020, Seruma sent Pallan an email attaching the "Kuramo Proposal for KN Food Fund" and an "estimation of percent ownership" of KN Agri based on the parties' prospective capital contributions.[66] On its face, Seruma's October 27, 2020 email memorializes the parties' agreed 60/40 (Nile/Kuramo) ownership split of KN Agri.[67] The 60/40 (Nile Kuramo) split of KN Agri was premised on the ascribed value of Mpala (23/38 = 60%) and Kuramo's conversion of the Bridge Loan to equity (15/38 = 40%).

Consistent with KN Agri's NAV, the foregoing is depicted in the demonstrative below[68]:

---

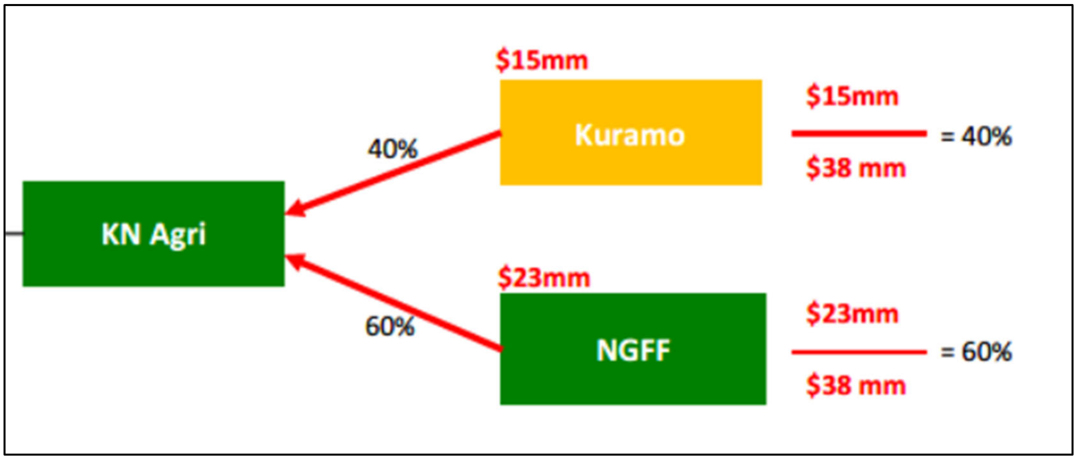
[64] A1891; A1891 ¶ 68; *id*. ¶¶ 20-21.

[65] A2050; A285-86/514, 520 (Pallan); A3091, A3094A3091; A3094, .0005; A977-79; A958; A948; A2933; A3042.

[66] A2072; A2300; A540/1187-88 (Seruma).

[67] A2072; A428/857-59 (Seruma).

[68] A3850; A429/860-61 (Seruma).

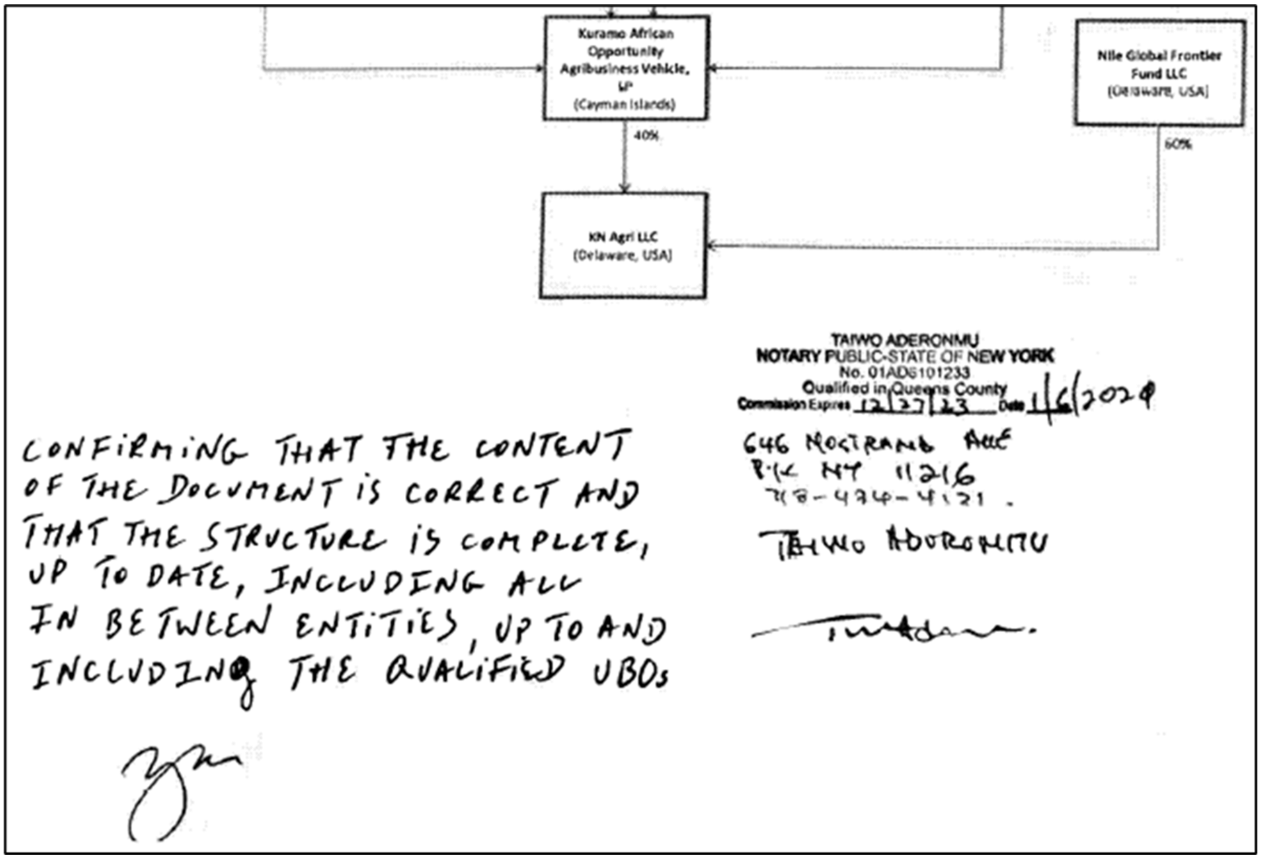


At trial, Pallan repeatedly admitted that Seruma had, in fact, proposed a "percentage ownership [of KN Agri] after the sale [of PHC to Feronia KNM], 60/40 in favor of Nile Global, 40 percent for Kuramo."[69] Indeed, the Kuramo Parties repeatedly circulated a chart to PHC's lenders ***signed by a Kuramo representative before a notary, confirming the 60/40 split***,[70] including one specifically attesting that the "***content of the document is correct***."[71]

[69] A266/439-40 (Pallan).

[70] A2082; A2137; A2131; A268-69/447-450 (Pallan).

[71] A2137 (emphasis supplied); A268-69/447-450 (Pallan); A564-65/1284-85 (Lamek); A3626/422 (Lamek).



The 60/40 (Nile/Kuramo) ownership split of KN Agri was further corroborated by DLA.[72]

5. Kuramo Fails to Fully Fund the Bridge Loan

Kuramo CIV III never fully funded the $15 million Bridge Loan or converted it into equity in KN Agri,[73] although Pallan understood Kuramo CIV III's obligation to do so: "I am perfectly clear on the documents. We will fund [$15 million] into

[72] A564-65/1284-85, A566/1290 (Lamek).

[73] A273/465-66 (Pallan); A245/356 (Pallan); A424/840-43, A428/858, A478/1058 (Seruma); A566/1289 (Lamek).

KN Agri as a loan and convert the loan into equity at the same basis."[74] "[T]he Kuramo loan was to be converted into 40% of the KN Agri Fund by way of non-managing LLC interests."[75] Kuramo only funded $9.75 million of the loan to KN Agri.[76] Confirming that Kuramo never converted its debt to equity, the Kuramo Parties sought to recover the money Kuramo CIV III loaned to KN Agri in this action.[77]

6. Mafuta Fails to Purchase Shares in Feronia KNM

"Mafuta was supposed to be a shareholder at the [Feronia] KNM level."[78] The parties anticipated that Feronia KNM would have two stockholders, KN Agri and Mafuta.[79] Mafuta's percentage interest also would depend on how much Mafuta paid for its shares.[80] In Mafuta's words, "all historical funding is irrelevant and must be foregone."[81] In Kuramo's words, "final ownership shall be based on the ultimate amount invested into NewCo."[82] Kuramo maintained that Mafuta had to pay "[$]2.3

[74] A1883; JA2078; A425/844 (Seruma); A286/519 (Pallan).

[75] A565/1288 (Lamek).

[76] A424/843 (Seruma).

[77] A245/356 (Pallan).

[78] A429/863 (Seruma).

[79] A429/860, A431/870-72 (Seruma); A1129; A2086.

[80] A564/1283 (Lamek); A2300.

[81] A1861; A266/437 (Pallan); A272/461 (Pallan).

[82] A1195.

million to maintain 15% equity" in Feronia KNM.[83] Mafuta never bought any shares.[84]

C. The Kuramo Parties Seize PHC

1. The Governance Dispute

Adeosun and Pallan "were never involved in managing PHC before the restructuring."[85] Seruma and Mpinga—not any Kuramo representative—became Feronia Inc. directors in 2018.[86] Pallan did not join Feronia Inc.'s board until May 2020,[87] and Adeosun never did.[88] In May 2020, Seruma became the Executive Chairman of Feronia Inc., affording him "extensive [governance] rights at PHC."[89]

During the restructuring, Seruma, Pallan, and Adeosun had "many conversations" concerning the anticipated corporate governance of PHC after the restructuring.[90] The need to finalize PHC's corporate governance became more pressing when PHC's Director General (or "DG") resigned in late December 2020.[91]

---

[83] A2070; A265/435 (Pallan).

[84] A430/864 (Seruma); A565/1286 (Lamek).

[85] A436/891 (Seruma).

[86] A380/784, A436/891 (Seruma).

[87] A381/791, A384/803, A418/816, A541/1192 (Seruma).

[88] A380/784 (Seruma).

[89] A251/378 (Pallan); A344/641-42 (Adeosun); A420/824-25, A421/830 A432/873 (Seruma); A1210 (Marit Aff.) ¶ 15.

[90] A432/872 (Seruma).

[91] A437/895 (Seruma).

Under PHC's Articles of Association, Feronia KNM, as the majority owner of PHC's Class A shares, had the right, among others, to nominate PHC's new DG.[92] The Kuramo Parties, by contrast, admittedly had no "authority to set the governance structure for PHC, including the number of board members and composition of the PHC board."[93] Nevertheless, on January 22, 2021, Adeosun unilaterally declared that the "leadership and governance will be as follows": "at the PHC level, Kalaa Mpinga becomes the CEO, and at the Feronia KNM level, Wale [Adeosun] becomes the chairman and [Larry Seruma] [becomes] the vice chair."[94]

Seruma strenuously objected by reply email attaching his own corporate governance structure.[95] Adeosun "made it very clear that if [Seruma] did not allow [Mafuta's principal] Kalaa [Mpinga] to become DG, [PHC's Director General], [Kuramo] would redeem all their assets with the funds [Seruma] manage[d], and [Kuramo] also would terminate [the] relationship [they] ha[d] with Nile Capital

[92] A2241 § 9.2; A2237 § 6.2.

[93] A3005.

[94] A435/885 (Seruma); A2151.

[95] A2152.

Management."[96] Seruma declined, because he was "not going to be bullied into the decision" and believed he was "acting in the best interest of [his] funds."[97]

To arm Adeosun in his discussions with Seruma, Pallan emailed Adeosun a set of talking points "for [his] back-pocket."[98] Pallan wrote:

> The [bridge] loan of $10 million can be called within 5 business days notice, failing which payment would put KN Agri into default. This is the main lever on KN Agri.[99]

This leverage was so important to Kuramo that it interfered with PHC operations to preserve it. Seruma informed Adeosun and Pallan that he had negotiated a supply contract between PHC and a palm oil purchaser, which Seruma reported would result in "surplus cash flow" and obviate the need for "new equity."[100] Adeosun concluded that, if the supply contract were consummated, Seruma "would have had enough to pay back the [Bridge Loan] if he [became] DG,"[101] which would have stripped Kuramo of its "main lever on KN Agri."[102] At Adeosun's request, and without Seruma's knowledge, Mpinga "called the

---

[96] A441/911 (Seruma); A275/476 (Pallan).

[97] A441/911 (Seruma).

[98] A2160.

[99] A2160; A2175; A275-76/476-77 (Pallan).

[100] A2159; A276/477-78 (Pallan).

[101] A276/479-80 (Pallan) (discussing A2222).

[102] A2160.

[prospective palm oil purchaser] to hold off on any signature."[103] Kuramo thus sabotaged PHC's revenues to stop Seruma from repaying the Bridge Loan that Kuramo refused to convert.

2. The Coup

In late January 2021, a PHC executive, Monique Gieskes, invited Seruma to nominate himself as interim DG to fill the void left by the retiring DG.[104] Gieskes sought legal advice from PHC's counsel,[105] and Seruma sought legal advice from DLA, as to whether it was legally permissible and appropriate to do so.[106] On January 25, 2021, PHC's lawyer explained that "there can be no vacancy" and that Seruma could "only officially exercise his functions of Interim Managing Director after his appointment by the Board of Directors on the proposal of [Feronia] KNM."[107] Therefore, "the Chairman of PHC should convene a meeting of the Board of Directors in the coming days [.]"[108] DLA concurred and opined that a "meeting of

[103] A276/480-81 (Pallan) (discussing A2222).

[104] A438/896-99 (Seruma).

[105] A3823; A438-39/899-901 (Seruma).

[106] A438/897 (Seruma).

[107] A3833.

[108] A3833.

the Board of Directors must be convened on short notice."[109] PHC's Chairman scheduled a meeting for February 9, 2021.[110]

Hours before the meeting, Adeosun and Mpinga sent a letter to the Chairman of PHC's board declaring KCM to be the "beneficial owner of Feronia KNM,"[111] when in fact KN Agri, under Seruma's control, wholly owned Feronia KNM. They also misrepresented Seruma as merely "an employee of Feronia KNM," and used this misrepresentation of authority to "strongly protest" and "strongly recommend [the Chairman] deny" Seruma's DG nomination.[112] Adeosun knew he had no authority to do so. Earlier that same day, Mpinga had texted Adeosun, stating:

> [W]e are really expose[d] in that [Seruma] can change the board immediately and we will have to go to court even [in the DRC] to stop it. ***Only [Seruma] has the right to appoint directors. I have confirm[ed] this***.[113]

During the February 9 board meeting, Seruma was nominated to be the interim DG.[114] Adeosun again misrepresented himself as "shareholder of the Feronia Group,"[115] and Mpinga likewise misrepresented himself as an "owner[] of Feronia

---

[109] A3832; A440/904-05 (Seruma).

[110] A2173; A440-41/907-08 (Seruma).

[111] A2164.

[112] *Id*.

[113] A2177 (emphasis supplied).

[114] A441/909 (Seruma).

[115] A2166-67.

KNM, who owns 100% of Feronia Maia's shares."[116] They objected to Seruma's nomination, and insisted that Mpinga become the DG.[117] In response, the PHC board held a "secret ballot" and appointed Gieskes to interim DG instead of Seruma, and scheduled a follow-up stockholder meeting for February 25, 2021.[118]

Shortly after the February 9 board meeting, Pallan emailed Adeosun[119] outlining the steps to exploit what he had described as Kuramo's "main lever on KN Agri."[120] Specifically:

> The steps will be once the loan to KN Agri is not returned, the entity goes into default ***and we can take it over as lenders***. Then as owners for KN Agri we can replace the Directors for Feronia KNM.[121]

On February 10, 2021, Pallan sent PHC's board—on admittedly fabricated Feronia KNM letterhead[122]—a "governance and ownership structure [chart] of Feronia KNM," in which Pallan misrepresented that "Kuramo Capital Management and its advised funds own 99% of KN Agri, which is the principal owner of Feronia

[116] *Id.* at A2167-69.

[117] A441/909-10 (Seruma); A2170.

[118] A442/912-13 (Seruma); A2170.

[119] A2175.

[120] A2160.

[121] A2175 (emphasis supplied); A275-76/476-77 (Pallan).

[122] A279/492 (Pallan).

KNM."[123] At trial, Pallan conceded that he had intended to communicate that Kuramo controlled Feronia KNM and therefore PHC.[124]

DLA repeatedly warned Adeosun and Pallan that KCM had no right to control Feronia KNM or PHC.[125] In a February 11, 2021 letter, DLA rejected the "false" claim that Kuramo owned "99.9% ownership of KN Agri and [a] claimed right to have some purported right to unliterally change the ownership structure and governance"[126] of PHC and advised that Kuramo had "no authority nor any title to [communicate with] PHC's staff nor to nominate any representatives of Feronia KNM to join the board of PHC."[127] In a February 16, 2021 letter, DLA rejected any "purported dispute over the legal ownership and decision-making authority at KN Agri and in turn at Feronia KNM, none of which is really in dispute based on all of the existing agreements and investment documentation [discussed therein]."[128] In a February 26, 2021 email to PHC's lenders copying Adeosun and Pallan, DLA

---

[123] A2179.

[124] A280/494-96 (Pallan).

[125] *See generally* A3355-59A3205; A3368-92 (Lamek Dep.).

[126] A2220; A3205 (Lamek) at 151-155;164-188.

[127] A2223.

[128] A2286; A3357-59 (Lamek Dep.).

"point[ed] out the following facts, all of which are supported by the underlying documents:"[129]

> Kuramo has two legal relationships with KN Agri LLC:
>
> (i) it is a holder of Series B Non-Managing Membership Interests [in KN Agri], which … as a result of the Bankruptcy of Feronia Inc. is worthless ...
>
> [ii] Kuramo is also party (as lender) to the May 2020 $15,000,000 loan agreement pursuant to which Kuramo committed to loan KN Agri up to $15,000,000 in connection with the Feronia KNM and PHC transaction. The loaned $15,000,000 was to have been converted into Kuramo's 40% non-managing membership participation is the KN Agri general fund which would hold the Feronia KNM investments and another African agricultural investment [Mpala] on a pooled basis …[130]

Because KCM had no valid response, Adeosun and Mpinga instead agreed to "neutraliz[e] DLA as soon as possible."[131] They planned to file a frivolous lawsuit in Canada against DLA and individual lawyers ostensibly in the name of KKM2.[132]

Adeosun began holding a "PHC daily operations management call" that he chaired—de facto management of PHC.[133] The Kuramo Parties and Mafuta

---

[129] A2446, A2460, A2493.

[130] A2501; A562/1274-75, A566-67/1292-94, A571-72/1311-16, A573-74/1320-22 (Lamek); A2510.

[131] A3825; A3839.

[132] *Id.*; A2900.

[133] A3826; A345/645, A347/652-53 (Adeosun).

nominated a fraudulent slate of directors to seize control of PHC.[134] The Kuramo Parties and Mafuta then replaced long-term PHC employees and officers with friends and family of Kuramo and Mafuta.[135]

Seruma stayed in the DRC to "wait for the shareholder meeting on February 25th, because that was [his] opportunity to replace the board,"[136] which he had to attend in person.[137] Seruma soon learned that "immigration officers were looking" for him and became concerned for his safety.[138] As discovery in this action confirmed, Seruma's concerns were justified.[139] On February 25, 2021, Seruma attended the PHC stockholder meeting[140] and "nominated a new slate of board of directors at PHC,"[141] but the "slate of directors was not accepted by PHC."[142] The coup was complete.

---

[134] A281/498-99 (Pallan).

[135] *Id.*; A3109.

[136] A442/915, A443/919 (Seruma).

[137] A443/919 (Seruma).

[138] A442-43/915-16, A443-44/920-24 (Seruma).

[139] Facts, Section E. A2263; A3830; A3827; A2306; A2307; A2285; A2899; A3825; A2226.

[140] A444/922 (Seruma).

[141] *Id.*

[142] A444/923 (Seruma).

D. The Kuramo-Mafuta Conspirators Cement the Coup

Unbeknownst to Seruma, Kuramo and Mafuta had secretly agreed before July 2020 to pursue a common "objective which [had] ***always been the path to control*** [***PHC***]."[143] Kuramo and Mafuta later "agreed that, once [they] had control of the company, [they] would put a Congolese team in place."[144] Mpinga is Congolese; Seruma is not. On December 28, 2020, Adeosun affirmed he would adhere to what he and Mpinga had previously "agreed to in managing Feronia KNM and PHC."[145] Meanwhile, Adeosun continued the charade of discussing governance issues with Seruma for nearly a month before declaring KCM's purported governance diktat (without disclosing the longstanding KCM-Mafuta governance agreement).[146] Mpinga later reiterated and confirmed that Mafuta's "ability to acquire control of the [PHC] … [had] always been a fundamental facet to [the Kuramo-Mafuta "partnership"]."[147]

After Kuramo and Mafuta seizing control of PHC, Kuramo and Mafuta mobilized to cement their control. A Kuramo and Mafuta associate emailed:

---

[143] A1132 (emphasis supplied); A3839; A339/622 (Adeosun); A248/365 (Pallan); A543-44/1200-01 (Seruma).

[144] A2130; A3835.

[145] A2129.

[146] A2151.

[147] A3106; A3838.

> I am sure that Wale [Adeosun] and you will do the needful to get our 'friend' [*i.e.*, Seruma] ou[t] of the way. Once he is out of the country, I suggested to Kalaa [Mpinga] that we make sure he is not accepted back in.[148]

KCM and Mafuta also sought a "way for the DRC to be involved in ensuring that the original promoters (Kuramo and Mafut[a]) are put in charge of [PHC]."[149] KCM and Mafuta did not mince words:

- "***The first step is to get Larry arrested for fraud and charged to court in the DRC*** . . . [PHC's lenders] will act based on what you do in the DRC first. [Seruma] still has their backing and that of [another PHC lender]. Incriminate and discredit [Seruma] and [the Lenders] will distance themselves from him. Pure and simple!"[150]
- Mpinga asserted the "need to pursue a ***criminal prosecution of*** [***Seruma***] in the DRC."[151]
- "If [Mpinga] does not sue [Seruma] and ***get him arrested*** we will all be sorry."[152]

The Kuramo-Mafuta conspirators knew Seruma had done nothing to warrant legal action against him; even as they implemented their onslaught, they were still searching for "any loopholes in the contracts signed with Kuramo and any laws" that would validate legal actions already underway, as well as for some way to cast doubt

---

[148] A2263.

[149] A2285; A346/649-50 (Adeosun).

[150] A2306 (emphasis supplied).

[151] A3827 (emphasis supplied); A345/644-47 (Adeosun).

[152] A2307 (emphasis supplied).

on the "veracity of [Seruma's] claims."[153] On March 9, 2021, the Kuramo-Mafuta conspirators met to discuss the "(i) Planned Prosecution of LS (by PHC, Kuramo, & Mr. Mpinga); (ii) Plans to protect company against LS and DLA."[154] Seruma had, in fact, become the subject of a DRC criminal prosecution based on a complaint filed by his former ally turned Kuramo collaborator, Gieskes.[155]

To entrench their control, Mpinga, with Kuramo's knowledge and blessing, lied to a DRC court to invalidate the Asset Sale, concealing that a Canadian court—with Mafuta's consent—had approved the sale,[156] and that Mpinga himself had acknowledged Seruma's exclusive authority.[157]

---

[153] A2285.

[154] A3839.

[155] A2899; A2506.

[156] A2289.

[157] A2177.

ARGUMENT

I. THE TRIAL COURT ERRED IN FAILING TO FIND THAT THE KURAMO PARTIES BREACHED THE KN AGRI AGREEMENT AND THE NGFF AGREEMENT

A. Question Presented

Whether the trial court erred in finding that unambiguous exclusive-management provisions in the KN Agri Agreement and the NGFF Agreement had been modified by the parties' course of conduct.[158]

B. Scope of Review

This Court "reviews the Court of Chancery's legal conclusions de novo but defers to the Court of Chancery's factual findings supported by the record." *Coster v. UIP Cos., Inc.*, 300 A.3d 656, 663 (Del. 2023). Factual findings will be reversed if not "the product of an orderly and logical deductive process." *Backer v. Palisades Growth Cap. II, L.P.*, 246 A.3d 81, 94–95 (Del. 2021). Legal conclusions are reviewed de novo, including questions of contract interpretation, *City of Newark v. Donald M. Durkin Contracting, Inc.*, 305 A.3d 674, 679 (Del. 2023), and the "proper allocation of the burden of proof." *State Farm Mut. Auto. Ins. Co. v. Spine Care Del., LLC*, 238 A.3d 850, 857 (Del. 2020). These standards are not repeated in each section below.

---

[158] Preserved: A4112-18; A4215-16 & n.239.

C. Decision Below

The trial court concluded the KN Agri Agreement had been "modified by the parties' course of conduct," including that "Kuramo had been involved in KN Agri and NGFF management decisions."[159]

D. Merits of Argument

The KN Agri Agreement provides that NGFF, as Managing Member, "exercises ultimate authority over [KN Agri] and each Series."[160] The Managing Member holds "absolute power … without notice to the Non-Managing Members, to carry out any and all of the objects and purposes of [KN Agri] and of each of the Series."[161] By contrast, except as authorized by the Managing Member, "the Non-Managing Members shall have no authority or right to act on behalf of [KN Agri] or any Series in connection with any matter," subject only to narrow inapplicable exceptions.[162] Kuramo's affiliate was a non-managing member of KN Agri Series B.[163] Its sole contractual right was to redeem its investment after the applicable hold period.[164]

[159] Opinion at 77, 79.

[160] A2192 § 2.1.

[161] A2192 § 2.2.

[162] A2192 § 2.1.

[163] A2286; A3357-59 (Lamek Dep.).

[164] A2501; A571-72/1311-16, A573-74/1320-22 (Lamek).

The NGFF Agreement imposes parallel but independently enforceable management restrictions. Section 5.1 provides that the fund's "business shall be controlled and conducted solely" by NCM; Section 6.1 prohibits non-managing members from: (i) "***tak***[***ing***] ***part in the management or control of the business or affairs***" of NGFF; (ii) "**hav**[***ing***] ***any voice in the management or operation of any Company property***"; or (iii) "act[ing] as agent for or act[ing] on behalf of" the fund.[165] Pursuant to the Series P Subscription Agreement, Kuramo Master Fund invested in the NGFF and acceded to the NGFF Agreement.[166]

NGFF thus had the exclusive contractual right to manage KN Agri and its investments,[167] including Feronia KNM (a wholly owned subsidiary of KN Agri)[168] and PHC (an asset of Feronia KNM since November 19, 2020).[169] Indeed, Kuramo admits that it had no management rights over KN Agri, Feronia KNM, or PHC.[170] And yet, as Pallan admitted at trial: "We took control of PHC after the events of February 9th and 10th, et cetera, yes."[171] That is a breach. *In Feeley v. NHAOCG,*

---

[165] A2640 §§ 5.1, 6.1 (emphasis supplied).

[166] A3779 B-3 ¶ 2.

[167] A2887 § 6.1; A2192; 6 *Del. C.* § 18-215(a).

[168] A3205 (Lamek Dep. Tr.) at 151-155;164-188

[169] A562/1274-75 (Lamek); A257/401-02 (Pallan).

[170] A3015 (Resp. 23); A3023 (Resp. 44); A3026 (Resp. 56-57); A258/405 (Pallan); A272/462 (Pallan); A274/470 (Pallan); A281/497 (Pallan).

[171] A273/466 (Pallan).

LLC, 2012 WL 4859132, at *6-7 (Del. Ch. Oct. 12, 2012). Rather than find a breach, however, the trial court found that the KN Agri Agreement had been "modified by the parties' course of conduct" to excuse that breach.[172] The trial court's modification-by-conduct analysis is clearly erroneous.

First, the KN Agri Agreement precludes amendment absent "written consent."[173] There is no such written consent. That should end the analysis, absent evidence that the parties effectively waived the writing requirement itself by course of conduct. *Cont'l Ins. Co. v. Rutledge & Co*., 750 A.2d 1219, 1229 (Del. Ch. 2000). They did not.

Second, Delaware courts "disfavor" modification of contracts by conduct and thus require proof by "clear and convincing evidence." *Eureka VIII LLC v. Niagara Falls Hldgs. LLC*, 899 A.2d 95, 109-10 (Del. Ch. 2006). The evidence the trial court cites—Kuramo's participation in discrete activities at the managing member's invitation[174]—falls far short of the clear and convincing evidence required to "leave no doubt of the intention of the parties to change what they previously solemnized by formal document." *Rexnord Indus., LLC v. RHI Hldgs., Inc*., 2008 WL 4335871, at *8 (Del. Super. Sept. 17, 2008).

---

[172] Opinion at 77.

[173] A2216.

[174] Opinion at 79.

Third, even if the parties' course of conduct somehow warranted modifying Nile Global and KN Agri's exclusive management rights to permit "Kuramo's more-than-passive level of involvement,"[175] there is zero evidentiary support for the proposition that NGFF, as Managing Member of KN Agri, agreed by course of conduct to amend the KN Agri Agreement—which, by its express terms, required written amendment—to *fully surrender its exclusive contractual right* to manage KN Agri in favor of KCM. To the contrary, when KCM first asserted unilateral authority to dictate the governance structure of KN Agri's assets (Feronia KNM and PHC)—authority that rightfully resided in NGFF[176]—Seruma strenuously objected immediately in writing.[177]

---

[175] Opinion at 79.

[176] A3823; A2241 § 9.2; A2238 § 6.2.

[177] A2152.

II. THE TRIAL COURT ERRED IN FAILING TO FIND THAT KCM BREACHED THE NILE CAPITAL AGREEMENT

A. Question Presented

Whether the trial court erred in declining to find that KCM breached the exclusivity and non-compete provisions of the Nile Capital Agreement.[178]

B. Decision Below

The trial court rejected the exclusivity claim because GenAfrica was not proven to be a "public markets investment"[179] and the non-compete claim because GenAfrica did not "compete[] with Nile."[180]

C. Merits of Argument

Section 7.2(b) of the NCM Agreement required KCM to "allocate" all of its "public markets investment funds" to NCM, including GenAfrica,[181] for which NCM would serve as "sole Sub-Advisor."[182] Section 7.4 prohibited Kuramo from "own[ing] or directly invest[ing] or own[ing] any business entity in competition with the activities or products" of NCM.[183] Under Section 13.8(b), this non-compete

[178] Preserved: A4119-22; A4230-31.

[179] Opinion at 85.

[180] Opinion at 85; A2977-78 §§ 7.2(b), 7.4

[181] A238/326 (Pallan); A453/958-59 (Seruma).

[182] A2977 § 7.2(b).

[183] A2978 § 7.4.

obligation extended eighteen months after Kuramo ceased being an NCM member.[184]

KCM breached Sections 7.2(b) and 7.4 by (i) failing to make NCM the manager of the GenAfrica investment,[185] (ii) naming a different manager (Nabo Capital Limited) to manage GenAfrica,[186] and (iii) managing GenAfrica themselves.[187] As late as October 2020, Pallan acknowledged NCM's right to manage GenAfrica.[188]

The trial court's contrary finding was clearly erroneous. As to exclusivity, the trial court ignored Section 7.2(b)'s broader sweep—covering "any other investment product or strategy" over which Kuramo has "control[,] discretion and/or management control."[189] GenAfrica satisfies that broad standard. As to non-compete, the trial court misread Section 7.4: NCM sourced, funded, and was contractually entitled to manage GenAfrica, and Kuramo's appropriation of that role

---

184 A2986 § 13.8.

185 A2977 § 7.2(b).

186 A2977 § 7.2(b).

187 A2978 § 7.4.

188 A2069.

189 A2977 § 7.2(b).

necessarily placed it in competition with Nile's core activities.[190] NCM is entitled to lost management fees as damages.

---

[190] A2978 § 7.4.

III. THE TRIAL COURT ERRED IN FAILING TO FIND THAT KURAMO II GP BREACHED THE KKM LETTER AGREEMENT

A. Question Presented

Whether the trial court erred in declining to find that Kuramo II GP breached the KKM Letter Agreement by making unilateral decisions in breach of NGFF's binding tie-breaking authority.[191]

B. Decision Below

The trial court improperly narrowed the agreement's scope, holding that two of three challenged acts did not involve "voting matters" and that the third—creating a special committee against Nile's instructions—was "not . . . developed factually."[192]

C. Merits of Argument

The KKM Letter Agreement is binding on the parties' voting rights. *Ringling Bros.-Barnum & Bailey Combined Shows v. Ringling*, 53 A.2d 441, 447 (Del. 1947); 8 *Del. C.* § 218(c). The agreement unambiguously provides that: (i) "Kuramo and Nile shall agree unanimously on all voting matters relating to the business of KKM and KKM2"; and (ii) "where such agreement is not reached, ***Nile's instructions***

[191] Preserved: A4122-24; A4231-32.

[192] Opinion at 81-82.

shall take precedence and be binding on Kuramo."[193] Thus, Seruma effectively controlled KKM2.[194]

Kuramo II GP breached the KKM Letter Agreement by making unilateral decisions that defied NGFF's binding instructions on three occasions: (i) the February 9, 2021 letter to PHC's board protesting Seruma's DG nomination;[195] (ii) voting to create a special committee of the KKM Board; and (iii) causing KKM2 to file suit in Canada against Seruma, KN Agri, Feronia KNM, and DLA.[196] Contrary to the Opinion, these are all "voting matters."[197]

In so doing, the trial court improperly excluded actions taken on behalf of—and binding on—KKM and KKM2.[198] But the scope of the agreements does not limit actions to formal stockholder or board voting. Rather, it encompasses all "voting

---

[193] A3001 (emphasis supplied); A378/778 (Seruma).

[194] A378/779 (Seruma); A3015 (Interrog. Resp. 23); A905; A249-50/370-75 (Pallan).

[195] A2900 (KKM Canadian complaint).

[196] A3001.

[197] *Israel Disc. Bank of N.Y. v. First State Depository Co., LLC*, 2013 WL 2326875, at *14 (Del. Ch. May 29, 2013) (unilateral action in disregard of contractual consent requirements is breach); *Palisades Growth Cap. II, L.P. v. Backer*, 2020 WL 1503218, at *9 (Del. Ch. Mar. 26, 2020) (voiding the election of leadership in disregard of voting processes outlined by contract, noting "corporate acts are voidable when board action [is] carried out by means of deception"); *ESG Cap. P'rs II, LP v. Passport Special Opportunities Master Fund, LP*, 2015 WL 9060982, at *12 (Del. Ch. Dec. 16, 2015) (liability attaches to unauthorized persons where a principal holds them out as having authority).

[198] Opinion at 80-82

matters relating to the business of KKM and KKM2"—a phrase that naturally extends to any decision or action taken in the name of, or on behalf of, these entities. Sending a letter on KKM's behalf to PHC's board—protesting a nomination and purporting to exercise authority over PHC's governance—is quintessentially a matter "relating to the business of KKM and KKM2."[199]

[199] A3001.

IV. THE TRIAL COURT ERRED IN FAILING TO FIND THAT KCM TORTIOUSLY INTERFERED

A. Question Presented

Whether KCM's interference with the Funds' exclusive management rights was "justified."[200]

B. Decision Below

The trial court held that Kuramo's interference was "justified" as an effort to "stop Seruma from running away with its [PHC] investment."[201]

C. Merits of Argument

The Funds proved tortious interference, which requires that (1) there was a contract, (2) about which the defendant knew, (3) an intentional act that was a significant factor in causing the breach of contract, (4) the act was without justification, and (5) it caused injury. *New Enter. Assocs. 14, L.P. v. Rich*, 292 A.3d 112, 140 (Del. Ch. 2023). The first, second, third, and fifth elements are easily satisfied: the governing agreements vested exclusive management rights in the Funds; KCM knew it; and KCM intentionally interfered with those rights, which deprived the Funds of ownership, profits, management rights and fees. Sections I-III. The operative question is justification.

[200] Preserved: A4108-09; A4217-21.

[201] Opinion at 71.

The nature of the actor's conduct is the "chief factor" in determining whether the manner of interference was justified. *ASDI, Inc. v. Beard Rsch., Inc.*, 11 A.3d 749, 752 n.16 (Del. 2010). But as the Restatement (Second) of Torts § 767 explains:

> [t]he issue is not simply whether the actor is justified in causing the harm, but rather whether he is justified in causing it ***in the manner in which he does cause it*** … Thus physical violence, fraudulent misrepresentation and threats of illegal conduct are ordinarily wrongful means and subject their user to liability ***even though he is free to accomplish the same result by more suitable means***.[202]

A comparison between the examples of improper conduct set forth in Section 767 and KCM's conduct confirms that its interference was not justified:

> **Misrepresentations**:[203] KCM (through Adeosun and Pallan) fraudulently misrepresented to PHC's board and its lenders that it had the right to control PHC and Seruma did not.[204]
>
> **Physical Violence**:[205] KCM and its co-conspirators[206] sent immigration officials to hunt Seruma to arrest him to

---

[202] Section 767, cmt. c (emphasis supplied); *NAMA Hldgs., LLC v. Related WMC LLC*, 2014 WL 6436647, at *29 (Del. Ch. Nov. 17, 2014).

[203] Section 767, cmt. c (Misrepresentations); *NAMA Hldgs.*, 2014 WL 6436647, at *29 ("A fraudulent misrepresentation is ordinarily an improper means of interference and precludes a defense of justification.").

[204] Facts, Section C; A2162; A2178.

[205] Section 767, cmt. c (Physical violence); *see, e.g.*, *NAMA Hldgs.*, 2014 WL 6436647, at *29 ("physical violence … [is] ordinarily [a] wrongful means and subject[s] [its] user to liability").

[206] Argument, Section V.

prevent Seruma from exercising his contractual rights, leaving him justifiably concerned for his safety.[207]

<u>Criminal Suits</u>:[208] at the direction of Kuramo Capital Management and its co-conspirators, Gieskes filed a bad faith criminal complaint against Seruma relating to the events at the PHC board meeting on February 9, 2021—after Gieskes herself nominated Seruma for DG at that meeting.[209]

<u>Civil Suits</u>:[210] Kuramo Capital Management and its co-conspirators filed multiple civil lawsuits in bad faith, including an action in Canada against KN Agri, Feronia KNM, Seruma, DLA, and DLA lawyers ostensibly in the name of KKM2—even though Nile (not Kuramo) has the right to control KKM2 and did not authorize the action.[211]

<u>Economic Pressure</u>:[212] Kuramo Capital Management sought to "lever" the Bridge Loan and invoked the wrong contract to demand a redemption, despite a binding five-year lock-up period, both for the express purpose of pressuring Seruma to acquiesce to the Kuramo coup.[213]

---

[207] Facts, Section D; A2228; A2263.

[208] Section 767, cmt. c (Criminal suits).

[209] A2899; A2506; A437/896-99 (Seruma).

[210] Section 767, cmt. c (Civil suits); *see, e.g.*, *In re Insley*, 1999 WL 33457181, at *17 (Bankr. D. Md. Sept. 30, 1999) (under Section 767, civil litigation "wrongful if the actor . . . institutes or threatens to institute the litigation in bad faith").

[211] Facts, Section D.

[212] Section 767, cmt. c (Economic pressure); *see, e.g.*, *Preston Hollow Cap. LLC v. Nuveen LLC*, 2020 WL 1814756, at *18, n.260 (Del. Ch. Apr. 9, 2020) (economic pressure need not be "extreme" to be wrongful).

[213] Facts, Section C.

Because each of these means maps onto a category of conduct that Section 767 deems independently wrongful, the trial court's justification fails as a matter of law. This was illegal self-help, not justified interference.

KCM's main defense—that a "party to a contract cannot tortiously interfere with its own contractual relations"—likewise fails. KCM is not a party to the NGFF Agreement or the KN Agri Agreement—Kuramo Master Fund and Kuramo Agri Vehicle are, respectively. Although KCM controls those entities, "Delaware maintains a role for tortious interference even when one entity controls another," particularly where the controlling entity was "motivated by some malicious or other bad faith purpose." *Bandera Master Fund LP v. Boardwalk Pipeline P'rs, LP*, 2019 WL 4927053, at *26–27 (Del. Ch. Oct. 7, 2019); *Shearin v. E.F. Hutton Gp., Inc.*, 652 A.2d 578, 590–91 (Del. Ch. 1994) (affiliate's conduct constitutes tortious interference when "motivated by some malicious or other bad faith purpose"). As the record makes plain, KCM's interference was motivated by bad faith.

V. KCM CONSPIRED WITH MAFUTA TO TORTIOUSLY INTERFERE WITH THE FUNDS' CONTRACTUAL RELATIONS

A. Question Presented

Whether the Kuramo Parties conspired with Mafuta to tortiously interfere with the Funds' contractual relations.[214]

B. Decision Below

The trial court did not reach the merits of whether a conspiracy existed. Rather, the trial court held that, because the underlying tortious interference claim failed, the civil conspiracy claim "fail[ed] for lack of a valid predicate."[215]

C. Merits of Argument

The elements of a civil conspiracy are "(1) the existence of a confederation or combination of two or more persons; (2) that an unlawful act was done in furtherance of the conspiracy; and (3) that the conspirators caused actual damage to the plaintiff." *Allied Cap. Corp. v. GC-Sun Hldgs., Ltd. P'ship*, 910 A.2d 1020, 1036 (Del. Ch. 2006). Separate corporate entities with common ownership "cannot" escape liability for collaborating "on a common illegal scheme," *id*. at 1044, and all conspirators are "vicariously liable for the acts of co-conspirators in furtherance of the conspiracy," *id*. at 1036.

---

[214] Preserved: A4110-12; A4222-26.

[215] Opinion at 74.

First, KCM (through Adeosun and Pallan) and Mafuta (through Mpinga) formed a "confederation" to jointly pursue a common "objective which [had] always been the path to control [PHC]."[216] That was a "fundamental facet to [their] arrangement."[217]

Second, the conspirators pursued that common "objective" through several "unlawful acts,"[218] including (i) Adeosun and Mpinga's joint effort to stop PHC from consummating a contract that would have raised money sufficient to pay off the Bridge Loan and thus eliminate the co-conspirators "main lever" over the Funds;[219] (ii) Adeosun and Pallan's deception that Kuramo controlled Feronia KNM and therefore PHC;[220] and (iii) using Mpinga's political connections to seek to have Seruma arrested, criminally prosecuted, and deported—or whatever else might be "needful to get our 'friend' ou[t] of the way."[221]

Third, the "actual damage" to the Funds is clear. As a direct result of successfully blazing a "path to control" PHC, the co-conspirators have (i) installed Kuramo and Mafuta loyalists to manage PHC, which was NCM's rightful

---

216 A1132; A339/622 (Adeosun).

217 A3106; A3838; A3109; Facts, Section D.

218 Argument, Section IV.

219 A2160.

220 A2164; A2179.

221 A2263; A2506.

prerogative,[222] (ii) collected millions in management fees from PHC, which rightfully belong to the Funds,[223] and (iii) stole PHC, which rightfully belonged to the Funds, the economic fruits of which the co-conspirators are receiving.[224]

As a result of the conspiracy,[225] the Kuramo Parties are vicariously liable for all conduct in furtherance of the KCM-Mafuta "partnership" to "acquire control" of PHC.[226]

---

[222] A339/621-22 (Adeosun); A1132.

[223] A284/510-11 (Pallan).

[224] A3846; A2963; A3002.

[225] *Allied Cap. Corp.*, 910 A.2d at 1036; *Nicolet, Inc. v. Nutt*, 525 A.2d 146, 147 (Del. 1987) (co-conspirators "jointly and severally liable for damages caused by the acts of co-conspirators if such acts were committed in furtherance of the scheme").

[226] A3106.

VI. THE TRIAL COURT ERRED IN SUSTAINING KURAMO'S BREACH OF THE BRIDGE LOAN CLAIM

A. Question Presented

Whether the trial court erred in holding that KN Agri breached the Bridge Loan and rejecting KN Agri's promissory estoppel claim.[227]

B. Decision Below

The trial court held that KN Agri breached the 2020 Bridge Loan Agreement.[228] The trial court also held that (i) Kuramo's Nile Capital Agreement breach of contract claim was subsumed in Kuramo's breach of fiduciary duty claim,[229] and (ii) Kuramo's KN Agri breach of contract claim was waived.[230]

C. Merits of Argument

After the Vesting Order admittedly "wiped out" the Kuramo Parties' historical equity investments in PHC,[231] their only further expenditure relating to PHC was funding $9.75 million of a $15 million Bridge Loan that the parties intended to be,

[227] Preserved: A4072-74, A4132-35; A4235.

[228] Opinion at 65.

[229] Opinion at 65. The trial court got this backwards. Fiduciary duty claims are sometimes subsumed in breach of contract claims, not the other way around. *Nemec v. Shrader*, 991 A.2d 1120, 1129 (Del. 2010) ("Any separate fiduciary duty claims that might arise out of the Company's exercise of its contract right … [are] foreclosed.").

[230] Opinion at 52.

[231] A245/353-55 (Pallan).

and was in fact, "on-loaned to PHC on an intercompany basis."[232] The Kuramo Parties promised to fully fund the loan to KN Agri and then convert it to an equity interest in KN Agri.[233] The Kuramo Parties did neither, instead weaponizing the bridge loan to pressure the Funds to surrender their rights and interests in PHC.[234] And yet, the trial court awarded the Kuramo Parties *both* an in-kind redemption of the Funds' rights, title, and interest in PHC (an asset the Kuramo Parties valued at $321 million in 2021), *and* ordered the Funds to pay back the $9.75 million Bridge Loan with interest—even though the loan proceeds were used to fund PHC's operations.[235] Consequently, the Kuramo Parties now (a) directly own 100% of PHC's public equity (far more than the indirect 40% interest they bargained for); *and* (b) have a judgment for the return with interest of every post-bankruptcy penny they funded to support PHC's operations. That is manifestly unjust.

It is also legally insupportable. Where a party induces reasonable reliance on its promises and then thwarts the counterparty's ability to obtain the benefits of that reliance, equity mandates voiding the underlying contract. *AB Stable VIII LLC v. Maps Hotels & Resorts One LLC*, 2020 WL 7024929, at *4 (Del. Ch. Nov. 30, 2020).

---

[232] A3853.

[233] A1881; A1883; A2067; A2081; A245/356, A271/458 (Pallan).

[234] A2160.

[235] Opinion at 89.

Here, the Funds agreed to the Bridge Loan only because the Kuramo Parties promised to fully fund and convert the loan to equity. The trial court rejected this argument because the Bridge Loan Agreement "fully governs the parties' relationship."[236] But the promise to fully fund and convert the loan to equity was never incorporated into that Bridge Loan; it was a separate undertaking on which the Funds relied. That is the gap promissory estoppel fills. *Rostowsky v. Hirsch*, 2024 WL 4491902, at *9-14 (Del. Ch. Oct. 15, 2024) (plaintiff entitled to promissory estoppel relief based on promise of 15% ownership interest, reasonable reliance, and detrimental actions including uncompensated labor and securing a start-up loan; enforcement necessary to avoid injustice).[237] The Kuramo Parties' breach of that promise was material, constitutes a failure of a condition precedent, and excuses KN Agri's performance under the Bridge Loan.

---

[236] Opinion at 86.

[237] A565/1286-87 (Lamek); *see* A1864; A1047.

VII. THE TRIAL COURT ERRED IN SUSTAINING KURAMO'S BREACH OF FIDUCIARY DUTY CLAIM

A. Question Presented

Whether the trial court erred in sustaining Kuramo's breach of fiduciary duty claim.[238]

B. Decision Below

The trial court found that Seruma, who controlled the Delaware LLCs through which the parties invested in PHC, breached his fiduciary duties by misappropriating Kuramo's "beneficial interest" in PHC through a series of self-dealing transactions.[239] To reach that result, the trial court applied the entire fairness standard and found that Seruma failed to prove fair dealing or fair price.[240]

C. Merits of Argument

1. The Entire Fairness Standard Is Foreclosed By The Governing Agreements

Delaware's LLC Act makes freedom of contract the governing principle, permitting LLC agreements to "expand[] or restrict[] or eliminate[]" members' and managers' duties, including fiduciary duties, in their entirety. 6 *Del. C.* § 18-1101(b)-(c). When parties exercise that latitude, the agreements supply the governing framework. As this Court has recognized, sophisticated investors in

---

[238] Preserved: A4141-46; A4236-49.

[239] Opinion at 52.

[240] Opinion at 55-58.

alternative entities "must read the entity's constituent documents carefully to understand their rights." *Holifield v. XRI Inv. Hldgs. LLC*, 304 A.3d 896, 923 (Del. 2023).

Here, the parties' agreements collectively established a layered regime (Seruma manages NCM, which manages NGFF, which manages KN Agri, which manages Feronia KNM, which owns the PHC Shares) that displaces default fiduciary duties and replaces them with a contractual framework materially different from entire fairness. The Nile Capital Management Agreement eliminates the duty of loyalty for discretionary acts outright.[241] The KN Agri and Nile Global Agreements independently supply standards keyed to subjective good faith and conferred authority, measuring the managing member against what it reasonably believed to be in the fund's best interests and within the scope of its granted authority, with liability only for gross negligence, fraud, or willful misconduct.[242] The KN Agri Agreement further confers on the managing member express authority to accept in-kind contributions and determine asset values, with those valuations binding and final as to all members.[243] And all three agreements authorize good-

[241] A2984-85 §§ 13.3(c).

[242] A2194 § 2.7; A2886 § 5.5

[243] A2198 § 3.2; A2203-24 §§ 3.7(e), 3.9.

faith reliance on professional advisors and third-party work product in exercising contractual discretion—including for restructuring and valuation decisions.[244]

The trial court applied none of these provisions. Instead, it acknowledged the governing contractual standards and then disregarded them, reasoning that the "analysis would be the same under the contractual standard" because Section 13.3(b) of the Nile Capital Agreement requires conflicts to be resolved "in a manner that is, or provides terms that are, fair and reasonable to the Company or any Member"—language the court equated to the entire fairness standard.[245] For four separate reasons, that reasoning cannot withstand *de novo* review. *Boardwalk Pipeline P'rs, LP v. Bandera Master Fund LP*, 288 A.3d 1083, 1111 (Del. 2022).

First, the trial court's "same result" shortcut fails at the threshold. Section 13.3(c)(i) of the NCM Agreement eliminates the duty of loyalty for discretionary acts: a Covered Person exercising granted discretion "shall be entitled to consider only such interests and factors as it desires, including its own interests, and shall have no duty or obligation to give any consideration to any interest of, or factors affecting any other Person."[246] If the challenged transactions fell within granted discretion under the NCM Agreement—which governed Seruma's role as Managing

[244] A2984 § 13.2(b); A2194 § 2.7; A2886 § 5.5.1.

[245] Opinion at 54-55 & n.283.

[246] A2967 § 13.3(c)(i)

Member of Nile Capital Management—then the duty on which the court premised entire fairness did not exist. The court never confronted this threshold question. Instead, it assumed a duty, applied entire fairness, and found a breach. That sequence is backwards: the contract must be parsed first to determine whether a duty exists at all. Because the court skipped that step, its "same result" assertion rests on a premise the contract may foreclose.

Second, Section 13.3(c)(ii) provides that a Covered Person acting within granted discretion "shall not be subject to any other or different standard imposed by this Agreement or other applicable law."[247] That is not merely definitional; it is a prohibition on importing Section 13.3(b)'s "fair and reasonable" standard into conduct the contract already governs.[248] The court therefore had to answer a threshold question before reaching any other: which contractual pathway—the discretion regime or the conflict-resolution regime—governs the challenged transactions? It never did. Instead, it proceeded directly to entire fairness, bypassing the threshold classification that determines whether any duty exists at all. That was legal error.

Third, even assuming arguendo that Section 13.3(b)'s conflict-resolution regime—rather than Section 13.3(c)'s discretion regime—governed the challenged

---

[247] A2985 § 13.3(c)(ii)

[248] A2967 § 13.3(c)(ii).

transactions, the court's equating "fair and reasonable" with entire fairness was still error. The court never engaged with Section 13.3(b)'s actual operative language, which requires the Covered Person to resolve conflicts by "considering the relative interest of each party (including its own interest) to such conflict, agreement, transaction or situation and the benefits and burdens relating to such interests, any customary or accepted industry practices, and any applicable generally accepted accounting principles"—a process-oriented, balancing standard focused on the decision-maker's subjective consideration of competing interests.[249] In other words, this provision imposes on the manager an obligation to "consider" and take the other party's relative interests into account, but does not require that competing interests be weighed equally or that the member's interests prevail. After engaging in that consideration, the manager may arrive at a resolution that favors his own position, and the safe harbor protects that result so long as the manager did not act in bad faith.[250] That is fundamentally different from entire fairness's objective, burden-shifted inquiry into "fair dealing" and "fair price."

The cases the court relied on do not support that equation. *Energy Transfer Equity L.P. Unitholder Litigation*, 2018 WL 2254706 (Del. Ch. May 17, 2018), applied "fair and reasonable" as the sole operative standard under a partnership

---

[249] A2984 § 13.3(b).

[250] A2984 § 13.3(a).

agreement that contained no separate discretion regime eliminating the duty of loyalty—the language was the entire governing standard, not one provision in a larger framework. *Brinckerhoff v. Enbridge Energy Co. Inc.*, 159 A.3d 242 (Del. 2017), resolved a contest between two competing standards that both parties conceded applied; it did not authorize importing an entire-fairness analog into an agreement that expressly eliminates fiduciary duties and insulates discretionary conduct from additional standards. Neither case presented what this case presents. Importing entire fairness here is not selecting among contractual standards—it is overriding the standard the parties agreed to with one they did not.

Fourth, the agreements' valuation and reliance provisions narrow what the court may second-guess and constrain equitable remedies—and under Section 13.3(b)'s own standard, they directly establish that Seruma acted in a "fair and reasonable" manner the court wholly ignored. The KN Agri Agreement authorizes acceptance and valuation of in-kind contributions and assigns valuation determinations to the managing member with finality as among members.[251] The agreements also permit good-faith reliance on professionals for valuation and structuring. The court acknowledged a professionally advised, court-supervised Canadian restructuring and lender-driven compliance constraints, then discounted

[251] A2198, A2203-24 §§ § 3.2, 3.7(e), 3.9.

that context as irrelevant to Nile's obligations "vis-à-vis Kuramo."[252] That was doubly wrong. Under the valuation-finality and reliance provisions, that context is not merely relevant—it is dispositive: a managing member who structured a transaction through independent counsel, independent directors, and a supervising court, and whose reliance on those professionals is contractually authorized, satisfies both Section 13.3(b)'s "considering relative interests" standard and the agreements' good-faith reliance safe harbor. The court instead dismissed multiple third-party valuations and audits—including by *Barfric, MAMM, Cohen & Co.*, and BDO—and selected rescission, later converted to an in-kind redemption, on the premise that valuation was too uncertain to support a tailored remedy. At minimum, the court was required to test whether valuation determinations and reliance were made in good faith and within authority before discarding objective indicators and resorting to the most intrusive forms of equitable relief.

Because these contract-specific elements were neither analyzed nor applied, the "same result" assertion is legal error requiring reversal or, at minimum, remand for application of the bargained-for standards to the existing record and for recalibration of any equitable remedy to the parties' contractual architecture.

[252] Opinion at 60.

2. The Entire Fairness Standard Was Not Triggered by the Undisputed Facts

The essential factual predicates of the trial court's decision to apply entire fairness—*i.e.*, that Seruma "personally benefited from the Transaction without sharing those benefits ratably with his fiduciary principal Kuramo"[253]—do not implicate the entire fairness standard.

First, no Nile Fund Party was on both sides of the Asset Sale. *Citron v. Fairchild Camera & Instrument Corp.*, 569 A.2d 53, 64 (Del. 1989) (business judgment rule applied to "wholly arms-length" transaction).

Second, Seruma did not "take charge" of the Asset Sale through self-dealing. The Asset Sale was approved by Feronia Inc.'s independent directors with advice of counsel,[254] implemented by an independent Proposal Trustee,[255] approved by a Canadian Bankruptcy Court and approved by Kuramo.[256] *In re Trados Inc. S'holder Litig.*, 73 A.3d 17, 44 (Del. Ch. 2013) ("plaintiff must prove that there were not enough independent and disinterested individuals among the directors making the challenged decision").

---

[253] Kuramo's Opening Post-Trial Brief ("Kuramo-Br.") at 110.

[254] A421/828 (Seruma).

[255] A420/827 (Seruma).

[256] A1892.

Third, the intended benefit of the Asset Sale—buying PHC at a substantial discount, deleveraging PHC by 80%, providing PHC much-needed working capital, and thereby creating value of PHC—was supposed to be, and would have been, shared "ratably" with the Kuramo Parties under the contemplated 60/40 (Nile/Kuramo) split of KN Agri.[257] That the benefits were not in fact shared ratably was not the result of anything Seruma did or failed to do; it was, instead, the direct result of Kuramo's decision to renege on its obligation to fully fund the Bridge Loan and its subsequent seizure of PHC.[258]

3. The Entire Fairness Standard Was Satisfied

Even assuming the entire fairness standard applied, both prongs of *Weinberger v. UOP, Inc.*, 457 A.2d 701, 711 (Del. 1983) were satisfied. The trial court's contrary conclusion rests on legal and factual errors that independently warrant reversal.

a. Fair Dealing.

Timing and initiation. The trial court found that "Seruma timed his transfer of Mpala to occur before the Restructuring Transaction" to lay the groundwork for his claim to a 60/40 split.[259] But the parties had been discussing consolidating PHC and

---

[257] A566/1290 (Lamek).

[258] A424/843) (Seruma); A273/465 (Pallan).

[259] Opinion at 59.

Mpala into a single fund "right from the outset of the relationship."[260] Seruma shared pitchbooks and valuation materials with Adeosun and Pallan throughout 2019,[261] and contributed Mpala to KN Agri in October 2019 in furtherance of that longstanding plan.[262] Nothing was surreptitious about the timing.

Negotiation and structure. The trial court stated that "there was no negotiation concerning the events that ultimately led Seruma to claim a 60/40 split."[263] The evidence is directly contrary. The 60/40 split was the product of negotiations between September and October 2020 ***in which Pallan proposed including Mpala in KN Agri***,[264] acknowledged Nile's resulting majority,[265] reviewed audited financials reflecting the Mpala valuation,[266] and admitted the proposed 60/40 allocation at trial.[267] The split specifically reflected the parties' new money contributions,[268] which was the precise framework the parties agreed in multiple writings would govern their respective equity interests in KN Agri, and was

---

[260] A367/732-33 (Seruma).

[261] A906-42; A980.

[262] A370/747 (Seruma).

[263] Opinion at 59.

[264] A1888.

[265] A1928:4-11.

[266] A286/520 (Pallan).

[267] A266/439 (Pallan).

[268] A565/1288, A566/1290 (Lamek).

memorialized in Seruma's contemporaneous written confirmation to Pallan,[269] and in DLA's February 26, 2021 email to PHC's lenders.[270] The record of negotiation and agreement is extensive and fatal to the trial court's finding.

Approval and structure. The trial court found "no independent structure or approval process."[271] That characterization is irreconcilable with the record. The Asset Sale was a public, court-supervised process approved by Feronia Inc.'s disinterested directors, led by a court-appointed Proposal Trustee, ratified by a Canadian Bankruptcy Court,[272] and unopposed by the Kuramo Parties.[273] The trial court dismissed these approvals on the ground that they dealt only with the "integrity of the process vis-à-vis the debtor and its creditors," not with "Seruma's actions vis-à-vis Kuramo."[274] But as between Seruma and Kuramo, the process was negotiated, disclosed, and agreed—including the critical decision to use Feronia KNM as purchaser, to which Pallan specifically consented,[275] and which all consortium members knew and agreed to.[276] Thus, even if entire fairness applied, Kuramo

[269] A2072.

[270] A2501.

[271] Opinion at 60.

[272] A1892.

[273] A1901 ¶ 28.

[274] Opinion at 57.

[275] A252/382 (Pallan).

[276] A564/1282 (Lamek).

ratified all these transactions. *Cancan Dev., LLC v. Manno*, 2015 WL 3400789, at *24 (Del. Ch. May 27, 2015) (finding no breach of duty where "Manno acquiesced in the transactions that reduced her interest to 11.5%," explaining that acquiescence applies when a claimant "has full knowledge of his rights and the material facts" and "remains inactive for a considerable time" or "freely does what amounts to recognition of the complained of act").

b. Fair Price.

As an initial matter, "[w]hen parties to a contract agree to be bound by a contractually established valuation methodology, [Delaware courts] will respect their right to order their affairs as they wish and refrain from second-guessing the substantive determination of value." *Peco Logistics, LLC v. Walnut Inv. Partners, L.P.*, 2015 WL 9488249, at *9-10 (Del. Ch. Dec. 30, 2015) (holding courts must "refrain from second-guessing the substance" of such a valuation). Here, the KN Agri Agreement provides that "[a]ll values assigned to … assets and liabilities by the … Manager (or their designees) shall be final and conclusive."[277] The trial court should not, therefore, have conducted a fair price analysis under the entire fairness doctrine. Instead, the trial court should have "determine[ed] whether a party breached the implied covenant of good faith and fair dealing." *PECO Logistics*, 2015 WL 9488249, at *11. But the trial court did the opposite, holding that, "[b]ecause

[277] A2203 § 3.7(e).

Kuramo prevailed on its claims for breach of fiduciary duty, the court need not reach" the implied covenant claim.[278]

In any event, the trial court found that the Funds "failed to prove fair price" and that each of the valuation reports Seruma presented—the Barfric valuation, the MAMM audit report, the Cohen & Co. memo, and the BDO report—"proved unreliable." That conclusion was clearly erroneous.

First, the trial court's observation that "the parties expressly agreed that Kuramo would not be diluted by Mpala" rendered the fair price inquiry somewhat beside the point[279]—a concession that undermines the court's own entire-fairness analysis. If the parties agreed Kuramo would not be diluted, then the question is not whether Mpala was worth $22.5 million; it is whether Seruma honored that agreement. He did. Kuramo would own its proportionate share of KN Agri based on its new money contributions (40%, contingent on full funding and conversion of the Bridge Loan), and Mpala would remain a separate KN Agri asset. The trial court's conflation of the Mpala contribution with the entire fairness of the Asset Sale was error.

Second, credible and competent evidence supports the ascribed value of Mpala. Four independent assessments—by Barfric, MAMM & Associates, Cohen

[278] Opinion at 62.

[279] Opinion at 61.

& Co., and BDO—bracket the $22.5 million ascribed value, ranging from $20.1 million to $30.9 million.[280] Kuramo's own expert, Muganwa, did not challenge the Barfric Report,[281] confirmed its methodology was valid,[282] and testified that applying the Barfric price-per-acre in her own model yielded a land value of $19,638,276 before adjustments.[283] The trial court dismissed all four valuations without adequately explaining why each was "unreliable" and without identifying affirmative evidence that the value was unfair. That was error. *In re Appraisal of Dole Food Co.,* 114 A.3d 541, 557-58 (Del. Ch. 2014) ("internal, contemporaneous valuations … may prove to be as or even more credible than the litigation-crafted opinions of valuation experts.")

4. The Kuramo Parties' Inequitable Conduct Bars Recovery

Even if the Kuramo Parties' fiduciary duty claim had merit, the doctrine of unclean hands precludes recovery. The Kuramo Parties' fraudulent misrepresentations, their utter disregard for the legal system under the guise of self-help, and the broader pattern of misconduct catalogued throughout this brief

---

[280] A3094; A958; A948; A2933.

[281] A3872/44, A3878/69 (Muganwa Dep.).

[282] A3871/38, A3921/238 (Muganwa Dep.).

[283] 3922/244-45 (Muganwa Dep.).

independently bar their claims. *In re Shawe & Elting, LLC*, 2015 WL 4874733, at *36, *38 (Del. Ch. Aug. 13, 2015).

VIII. THE TRIAL COURT ERRED IN ORDERING SERUMA TO DISGORGE ANY ADVANCEMENT AND INDEMNIFICATION

A. Question Presented

Whether the trial court erred in holding that Seruma was not entitled to indemnification.[284]

B. Decision Below

The trial court ordered Seruma to disgorge fees for indemnification or advancement, holding that Seruma did not act in good faith.[285]

C. Merits of Argument

Both the KN Agri Agreement and the NGFF Agreement entitle the Managing Member to indemnification for litigation arising from "good faith" acts or omissions "reasonably believed to be in, or not opposed to, the best interests" of the fund,[286] and authorize the Managing Member, in its "sole discretion," to "advance litigation fees and expenses."[287] The trial court held that Seruma "did not act in good faith" and acted "to promote his personal benefit."[288] That holding should be reversed if this Court reverses the breach of fiduciary duty finding. The evidentiary record—

---

[284] Preserved: A4150-51; A4254-55.

[285] Opinion at 67.

[286] A2194 § 2.7; A2847 § 5.5.1.

[287] A2824 § 5.5.2; A2195 § 2.8.

[288] Opinion at 67.

including Seruma's leadership of the restructuring—is clear that he acted at all times in the best interests of KN Agri and NGFF.[289]

[289] A432/873 (Seruma).

IX. THE TRIAL COURT ERRED IN ORDERING AN IN-KIND REDEMPTION

A. Question Presented

Whether the trial court erred in awarding in-kind redemption as a remedy.[290]

B. Decision Below

The trial court entered judgment ordering the Funds to "immediately redeem to Kuramo, in kind, free and clear of any liens, all direct and indirect interests held by the Nile in PHC and GenAfrica."[291] The trial court reasoned that (i) the governing agreements "do not explicitly prevent in-kind redemptions," (ii) a "contractual remedy cannot be read as exclusive of all other remedies if it lacks the requisite expression of exclusivity,"[292] and (iii) equitable remedies for breach of the duty of loyalty are "not to be determined narrowly" and override the LLC Act's prohibition on in-kind redemption absent an agreement to the contrary.[293]

C. Merits of Argument

The award of an in-kind redemption was erroneous for multiple independent and alternative reasons. First, under the Delaware LLC Act, "a member, regardless of the nature of the member's contribution, has no right to demand and receive any

---

[290] Preserved: A4265-79.

[291] A891 ¶ 1.

[292] A883-84.

[293] A884 at 4.

distribution from a limited liability company in any form other than cash," 6 *Del. C.* § 18-605, and "has no interest in specific limited liability company property," 6 *Del. C.* § 18-701. These defaults yield only to express contrary terms in an LLC agreement. *In re Coinmint, LLC*, 261 A.3d 867, 900–01 (Del. Ch. 2021); Robert L. Symonds Jr. & Matthew J. O'Toole, Symonds & O'Toole on Delaware Limited Liability Companies § 12.03[C] (2d. ed. 2019). The trial court inverted this framework, requiring the agreements to "explicitly prevent" in-kind redemptions rather than "explicitly authorize" them—the opposite of what the statute demands.[294]

Second, the governing agreements reinforce the statutory default at every turn. Section 8.7 of the Nile Capital Agreement, for example, provides that a "Member has no interest in specific Company property," and Kuramo's interest is defined as a "Distributive Interest"—*i.e.*, the right to receive distributions, not an interest in specific assets.[295] Section 13.10, which the trial court identified as the provision that "governs redemption,"[296] contemplates only cash redemptions.[297] And Section 10.1 directs distributions "as outlined in Exhibit B," which requires Nile to "secur[e] the

[294] A886-87 at 6-7.

[295] A2980 § 8.7.

[296] A877 at 3.

[297] A2987 § 13.10.

funding" on a "best efforts [basis] within six months," thus contemplating financing or liquidation, not in-kind distribution.[298]

The NGFF Agreement reinforces the statutory default. Although the NGFF Agreement language permits distributions "either in cash or in-kind," the next sentence provides that "[n]o Member shall, however, have the right to receive distributions in property other than cash."[299] The Managing Member's discretion to issue in-kind redemptions is a managerial prerogative, not a member right. *Ryan v. Buckeye P'rs, L.P.*, 2022 WL 389827, at *7 (Del. Ch. Feb. 9, 2022) (finding that provision stating that "[t]he General Partner *may* make such cash distributions *as it may determine"* did "not create a contractual right to receive them"). The Series P Supplement—pursuant to which Kuramo Master Fund invested approximately $25 million in the NGFF, and agreed to be bound by the NGFF Agreement—likewise vests in-kind discretion solely in the Managing Member.[300] That the parties gave the Managing Member waiver authority over withdrawal restrictions without granting Kuramo a parallel right confirms the omission was deliberate. *Fortis Advisors LLC v. Medicines. Co., & Melinta Therapeutics, Inc*, 2019 WL 7290945, at *4 (Del. Ch. Dec. 18, 2019) ("the carve-out reveals that the parties knew how to

[298] A2982 § 10.1, Exhibit B.

[299] A2841 § 3.14.2.

[300] A3777 B-1 ¶ 2.

expressly confer third-party beneficiary status, and the Court presumes that excluding the former Rempex equityholders from the carve-out was intentional”).

Third, corporate separateness independently bars the remedy. “[T]here exists a presumption of corporate separateness, even when a parent wholly owns its subsidiary and the entities have identical officers and directors.” *Principal Growth Strategies, LLC v. AGH Parent LLC*, 2024 WL 274246, at *16 (Del. Ch. Jan. 25, 2024). Here, NCM does not own the PHC Shares—Feronia KNM does, as the trial court held.[301] Kuramo cannot invoke the Nile Capital Agreement to redeem assets out of Feronia KNM, a separate entity in which Kuramo admits it has no “direct ownership interest.”[302] Permitting it to do so would let Kuramo leap frog the intermediate layers of special purpose vehicles who have their own creditors and restrictive shareholders’ agreements—precisely the end-run around corporate form the doctrine of corporate separateness is intended to foreclose.

Fourth, to justify ignoring the foregoing legal limitations, the trial court held that, “[o]nce a fiduciary breach has been established, [its] powers are complete to fashion any form of equitable and monetary relief as may be appropriate.”[303] But equity “follows the law” and “does not create remedies where the parties’ behavior

[301] Opinion at 92-93.

[302] A3010.

[303] A885-86.

is already closely regulated by the law." *RGC Int'l Invs., LDC v. Greka Energy Corp.*, 2001 WL 312454, at *10 n.45 (Del. Ch. Mar. 7, 2001); *Dover Assocs. Joint Venture v. Ingram*, 768 A.2d 971, 974 (Del. Ch. 2000) ("Equity must follow the law whenever the rights of the parties are clearly defined and established by a legal, contractual right."). This principle carries particular force in the alternative-entity context, where "equity will not save a bad contract" and "investors in alternative entities must read the entity's constituent documents carefully to understand their rights, and the limitations on their rights." *Holifield v. XRI Inv. Hldgs. LLC*, 304 A.3d 896, 923 (Del. 2023). Kuramo, a sophisticated institutional investor, chose not to negotiate for an in-kind distribution right and should not obtain through equity what it declined to secure through contract. *Neal v. Ala. By-Prods Corp.*, 1988 WL 105754, at *5 (Del. Ch. Oct. 11, 1988) ("In following the law, both statutory and contractual, I find that [plaintiff] is not entitled to [the remedy sought]").

Fifth, equitable relief must be "proximately related" to the proven misconduct. *Thorpe v. CERBCO, Inc.*, 676 A.2d 436, 444-45 (Del. 1996). It is the statutory and contractual constraints analyzed above—not any breach of duty—that foreclose in-kind redemption. Even if Seruma had faithfully discharged his duties, he still could have rightfully refused to redeem Kuramo in-kind. The remedy therefore lacks the requisite causal nexus. Kuramo's principal authority, *Paige Cap. Mgmt., LLC v. Lerner Master Fund, LLC*, 2011 WL 3505355 (Del. Ch. Aug. 8, 2011), is inapposite.

The Court in *Paige* ordered a cash distribution and did not consider whether the LLC Act permits in-kind redemptions. Neither Kuramo nor the trial court has cited even one case awarding an in-kind redemption as an equitable remedy absent contractual authorization. For each and all of these reasons, the trial court's order of in-kind redemption should be reversed.

CONCLUSION

For these reasons, this Court should reverse the judgment of the trial court.

	/s/ Ben Lucy
OF COUNSEL:	Eric A. Veres (#6728)
	Ben Lucy (#7324)
Andrew K. Glenn	ABRAMS & BAYLISS LLP
Trevor J. Welch	20 Montchanin Road, Suite 200
George L. Santiago	Wilmington, Delaware 19807
GLENN AGRE BERGMAN & FUENTES LLP	(302) 778-1000
1185 Avenue of the Americas	Veres@AbramsBayliss.com
22nd Floor	Lucy@AbramsBayliss.com
New York, New York 10036	
(212) 970-1600	*Attorneys for Defendants, Counter-Plaintiffs, Third-Party Plaintiffs-Below, Appellants Larry Seruma, Nile Capital Management, LLC, Nile Global Frontier Fund LLC, and KN Agri LLC*
Dated: April 22, 2026	