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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

APPELLANTS' REPLY BRIEF ON APPEAL AND
<u>CROSS-APPELLEES' ANSWERING BRIEF ON CROSS-APPEAL</u>

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INTRODUCTION

This appeal turns on questions of law, and Kuramo's Answering Brief never engages them. Each challenged ruling rests on a question this Court decides *de novo*—what the governing agreements mean, what the Delaware LLC Act permits, and whether the Chancellor's historical findings satisfy the governing legal standards. The Nile Fund Parties do not ask this Court to reweigh those facts; they ask only that the correct legal standards be applied. Kuramo's response is to invoke deference—*Levitt*, clear-error, abuse-of-discretion—as though that mantra could convert a legal question into a factual one. It cannot. Deference is not a substitute for an answer.

On issue after issue, Kuramo recasts a legal question as a factual finding and asks the Court to look no further. On the unprecedented in-kind redemption awarded to it below, Kuramo defends the remedy as discretionary but never explains how equity may confer a property right that 6 Del. C. § 18-605 withholds and the LLC agreements preclude. On whether the agreements displace the duty of loyalty, Kuramo incorrectly treats that legal question as one of fact entitled to deference. And on the Chancellor's resolution of justification on motive alone, Kuramo defends the ruling as fact-bound while never engaging the nature-of-the-conduct factor that § 767 makes the chief inquiry. Each is a question of law for this Court to decide.

Moreover, what Kuramo does defend, it defends on the wrong standard; and what Kuramo cannot defend, it simply does not engage. For example, Kuramo does not engage the written-consent requirement of the KN Agri Agreement or the exclusive-management provision of the NGFF Agreement, leaving both undisputed. It does not engage the "fully surrender" argument on the merits, raising only a preservation objection in its place. It does not engage the tie-breaker text in the KKM Letter Agreement making Seruma's instructions "binding on Kuramo." It does not engage Sections 7.2(b) and 7.4 of the NCM Agreement—provisions entitling NCM to manage GenAfrica and barring KCM from competing—resting instead on the Chancellor's narrow findings. It does not engage the double recovery on the Bridge Loan, never answering how Kuramo could both retain PHC and recover the loan that financed its acquisition. And it does not engage its own "perverse to enforce" rejoinder, telling the Court its words are "better spent elsewhere." In short, Kuramo consistently substitutes deference for engagement.

Rather than defend the rulings on the law, Kuramo charges that the Nile Fund Parties perpetrated a "fraud on this Court" by describing Kuramo as having "participat[ed only] in discrete activities . . . at [Seruma's] invitation." AB.5, 89. ***But "discrete" is the Chancellor's own word***, A845 n.372, and as Point I explains, an appellant's favorable characterization of the court's findings and its *de novo* challenge to its legal conclusions are appropriate, not sanctionable.

The stakes reach beyond these parties. Delaware law provides that exclusive-management provisions will be enforced as written, that entire fairness will be triggered only by a genuine conflict in the transaction under review, and that equity will not rewrite bargained-for allocation provisions to award a remedy the LLC Act forecloses. The decision below departs from each—errors of law that deference cannot cure. Reviewing *de novo*, this Court should reverse.

ARGUMENT

I. THE CHANCELLOR ERRED IN FINDING MODIFICATION BY CONDUCT BECAUSE THE AGREEMENTS REQUIRE WRITTEN CONSENT AND THERE WAS NONE

This Court should reverse the finding of modification by conduct because: (i) the KN Agri and NGFF Agreements require written consent to any amendment; (ii) no written amendment modifying the exclusive-management provisions exists; (iii) no evidence supports waiver of the writing requirement with the "specificity and directness" Delaware law requires; and (iv) the finding of "participation" cannot, as a matter of law, accomplish a modification *extinguishing* the Managing Member's exclusive authority. OB.39-40; A846. Kuramo responds that the Nile Fund Parties "concede that the Court below applied the correct legal standard," so the only question is whether the findings about Kuramo's "involvement" survive clear-error review. AB.88-89. Not so. Whether conduct can modify a contract despite a written-amendment clause, and whether the evidence satisfies the clear-and-convincing standard, are questions of law on which no deference is owed.

A. Whether Conduct Accomplished a Modification Is a Legal Question Reviewed *De Novo*

Kuramo does not dispute that the Nile Fund Parties preserved their contract-interpretation arguments below. Instead, Kuramo contends the Nile Fund Parties' "only issue is with the [Chancellor's] extensive factual findings concerning Kuramo's involvement in the PHC investment over the years." AB.88-89. But whether the credited conduct is legally sufficient to accomplish a modification extinguishing the Managing Member's exclusive authority—and whether such a modification can occur at all in the teeth of a written-amendment requirement—are questions of contract interpretation reviewed *de novo*. *See City of Newark v. Donald M. Durkin Contr., Inc.*, 305 A.3d 674, 679 (Del. 2023).

B. The Written-Amendment Clause Forecloses Modification Absent Written Consent, Which Was Neither Requested Nor Granted

The Chancellor erred as a matter of law because the KN Agri Agreement requires "written consent" for any amendment. A2216, § 9.4. No written consent exists. 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) (emphasis supplied). The writing requirement can be waived only on a showing, proven with "specificity and directness," that the parties intended to abandon written amendments. *Rexnord Indus., LLC v. RHI Hldgs, Inc.*, 2008 WL 4335871, at *8 (Del. Super. Ct. Sept. 17, 2008). But the Chancellor never made that finding, skipping to whether Kuramo was "involved" without asking whether the parties had waived the writing requirement. That omission is legal error.

Second, the record affirmatively defeats any waiver. The parties had previously amended their agreements in writing—the Amended KN Agri LLC Agreement and the Second Amended NGFF LLC Agreement. Section 11.1 of the NGFF Agreement authorizes the Managing Member to amend unilaterally in its "sole discretion," A2893, and Section 9.4 of the KN Agri Agreement permits amendment without Non-Managing Member consent in defined categories, A2216—and, with respect to the KN Agri Agreement, Kuramo never challenged either amendment. *See, e.g.*, A785 n.84. That the parties knew how to amend in writing when they intended to, yet produced no writing modifying the management provisions, confirms the writing requirement was not waived.

Third, the clear-and-convincing standard independently bars the result. Delaware courts "disfavor" modification by conduct and thus require "clear and convincing evidence," *Eureka VIII LLC v. Niagara Falls Hldgs. LLC*, 899 A.2d 95, 109 (Del. Ch. 2006), that "leave[s] ***no doubt of the intention of the parties*** to change what they previously solemnized by formal document." *Rexnord, Inc.*, 2008 WL

4335871, at *8 (emphasis supplied). Participation at the Managing Member's invitation is, at most, equivocal—and equivocal evidence cannot meet that burden.

C. Even Assuming The Writing Requirement Was Waived and That Conduct Could Modify the Agreements, the Chancellor's Own Findings Do Not Support the Judgment

The Chancellor found that the parties modified the agreements "to allow for Kuramo's involvement in Seruma's management decisions." A848. That finding—involvement *in* management decisions—is not a finding that the parties agreed to transfer management authority *to* Kuramo, nor does it make sense for an investment fund such as Nile. OB.40. Fund managers often work and consult with investors to seek their views, but that conduct does not translate into forfeiting management rights.

Nor does the point depend on minimizing Kuramo's role: even though Kuramo participated in the PHC investment from its 2017 inception—sourcing the deal, sitting on Feronia's board, and joining the Consortium's deliberations—such participation does not transfer exclusive authority of every fund manager that involves an investor would risk transferring investment authority. The judgment below requires not just that NGFF agreed to let Kuramo participate alongside it, but also that NGFF agreed to be *removed* from management altogether by letting Kuramo participate. The judgment rests on the second; the evidence establishes only the first.

The evidence the Chancellor cited to find modification by participatory conduct (A846-48) confirms that Seruma never agreed to displacement. Seruma's January 2021 email insisted that "Kuramo is a seeder[,] NOT a manager/controller" and described any role Kuramo held as "an observer role at the investee company subject to a mutual agreement." A2152. A manager who draws that line has not consented to his own removal. That Kuramo's principals attended board or even sat on a board is not to the contrary; such participation did not somehow excise Seruma from the Nile management structure altogether.

The implausibility of conduct-based modification reaching complete displacement is confirmed by asking what the modification would have to accomplish. To excuse Kuramo's seizure of control, it would need to override the KN Agri Agreement's management provision (§ 2.1), the NGFF Agreement's parallel restrictions (§§ 5.1, 6.1), the KN Agri power-of-attorney provisions under which non-managing members appoint the Managing Member to act on their behalf (§ 9.3), the KN Agri valuation-finality provisions making the Managing Member's valuation assignments final and conclusive (§ 3.7(e)), and the fee and distribution structure—in other words, a wholesale rewrite. A2192; A2843; A2848-49; A2215-16; A2203. Delaware courts have never held that years of cooperative participation can accomplish a restructuring of that magnitude by implication.

Kuramo's waiver objection—that the Nile Fund Parties "never made [the 'fully surrender'] argument below"—mistakes a sharpened argument for a new one. AB.90. Below, the Nile Fund Parties argued that no modification occurred "expressly or by conduct" and pressed the clear-and-convincing standard. A4215-16, A4216 & n.239. The "full surrender" framing is that same contention refined to meet the Chancellor's specific reasoning. Rule 8 requires fair presentation below, not verbatim repetition. Del. Sup. Ct.R. 8. The Chancellor's own finding confirms the point is properly before this Court: she found the parties modified the agreements "to allow for Kuramo's involvement," A848, then extended that limited finding to excuse Kuramo's complete seizure of control. The point is subsumed within the writing-requirement argument the Nile Fund Parties indisputably preserved.

D. Kuramo Manufactured Seruma's Exclusion Through Admitted Misrepresentations and Cannot Invoke It as Proof of Modification

Kuramo attempts to fill the gap between participation and removal with a different theory: that Seruma was excluded not by Kuramo but because "the company's principal stakeholders, from the DFI Lenders to the PHC board, all concluded that he was a fraud and cut ties with him." AB.90. That account inverts the record. Seruma was excluded not *despite* Kuramo but *because of* Kuramo.

The sequence is documented:

- On February 9, 2021, Kuramo sent PHC's board a communication—on admittedly fabricated Feronia KNM letterhead, A279/492 (Pallan)—misrepresenting that Kuramo and Mafuta were "99% beneficial owner[s] of Feronia KNM," casting Seruma as merely "an employee of Feronia KNM," and using this false color of authority to "strongly protest" and "strongly recommend [the Chairman] deny" Seruma's DG nomination. A2162-64.

- On February 10, 2021, Adeosun transmitted to PHC's board a "governance and ownership structure [chart] of Feronia KNM," representing that "Kuramo Capital Management, LLC and its advised funds own 99.9% of KN AGRI LLC" and that KN Agri was "the principal owner of Feronia KNM." A2178-79. At trial, Pallan conceded that he had intended to communicate that Kuramo controlled Feronia KNM and therefore PHC. A280/494-96 (Pallan).

- Kuramo made that representation knowing it had no management rights over KN Agri, Feronia KNM, or PHC, A3015; A3026—and that "the primary purpose . . . was to say that we own [PHC]." A280/496 (Pallan).

- Later that same day, Adeosun emailed the DFI lenders saying "Larry Seruma will cease to represent the consortium of Feronia KNM effectively immediately." A332-33/595-96 (Adeosun).

The stakeholders Kuramo now invokes thus did not reach an independent judgment about Seruma; instead, they acted based on the knowingly false picture Kuramo painted.

Kuramo's own co-conspirator confirmed this in real time. Hours before the February 9 board meeting, Mpinga told Adeosun they were "really expose[d] in that [***Seruma***] ***can change the board immediately***," because "[***o***]***nly*** [***Seruma***] ***has the right to appoint directors***. ***I have confirm***[***ed***] ***this***." A2177 (emphasis supplied). That admission is fatal. Kuramo cannot manufacture Seruma's wrongful exclusion from management through Kuramo's admitted misrepresentations and then invoke

Seruma's exclusion as proof of a modified bargain. The exclusion is the breach, not evidence of modification.

E. Kuramo's Accusations of Misconduct Are Meritless

Kuramo brands as "sanctionably false" the Nile Fund Parties' "premise that Kuramo 'participat[ed only] in discrete activities [related to PHC] at [Seruma's] invitation.'" AB.5. The accusation is baseless. "Discrete" is the Chancellor's own word: she found that "Seruma can control the entities as to the bulk of the Challenged Transactions although Kuramo actively participated in ***discrete*** events." A845 n. 372 (emphasis added). The balance of the premise rests on the agreements that made Seruma the only person authorized to act, A2192 § 2.1; A2843 § 5.1; A2848-49 § 6.1, and on Seruma's statement that he "agreed to Kuramo as an observer role . . . subject to a mutual agreement." A2152. A disagreement over emphasis is not sanctionable.

Kuramo's lead accusation—that the Nile Fund Parties "omitt[ed] any reference to these found facts . . . and invent[ed] new ones," AB.89—mistakes a legal disagreement for a factual omission. The Nile Fund Parties do not relitigate the Chancellor's historical findings. Rather, accepting those findings for purposes of this appeal, they challenge only the legal conclusion those findings supposedly compel—*i.e.*, that Kuramo's involvement amounted to complete displacement. An appellant contesting only that legal inference need not re-catalog the findings.

Identifying the inferences the record will and will not bear is advocacy, not fabrication.

Delaware law draws a sharp line: sanctions require *intentional* misrepresentation, not vigorous advocacy or competing characterizations of the record. *Hurst v. Gen. Dynamics Corp.*, 583 A.2d 1334, 1341 (Del. Ch. 1990); *see also Crumplar v. Superior Ct. ex rel. New Castle Cty.*, 56 A.3d 1000, 1008 (Del. 2012) ("An attorney who fails to respond directly to an opponent's citation of" caselaw "does not ipso facto face Rule 11 sanctions"). One who fabricates citations or misstates holdings may be sanctioned; one who characterizes the findings favorably and disputes the legal conclusions *de novo* is advocating. The Nile Fund Parties did the latter.

Kuramo's remaining accusation—that the Nile Fund Parties reproduced a cropped chart to mislead this Court—fares no better. The full, unaltered chart appears in the record at B1220, and the decisive facts rest on the agreements and contemporaneous writings cited above, not any single exhibit. A dispute over the presentation of one such chart is not fraud.

II. THE CHANCELLOR ERRED IN CONSTRUING THE EXCLUSIVITY AND NON-COMPETE PROVISIONS NARROWLY AND IN FAILING TO FIND THAT KCM BREACHED THEM

KCM breached the exclusivity and non-compete provisions of the NCM Agreement by (i) failing to make NCM the manager of the GenAfrica investment, (ii) naming Nabo Capital Limited to manage GenAfrica instead, and (iii) managing GenAfrica itself. OB.42. Kuramo responds that GenAfrica is neither a "public markets investment" under § 7.2(b) nor a "compet[itor] with Nile" under § 7.4. AB.94-95. Both responses fail. Whether GenAfrica falls within § 7.2(b)'s defined scope, and whether KCM's appropriation of NCM's management role is "competition" under § 7.4, are questions of contract construction reviewed *de novo*. *See City of Newark*, 305 A.3d at 679. The Chancellor read § 7.2(b) too narrowly by treating Seruma's "public markets investment" acknowledgment as dispositive and failing to construe the provision's broader "any other investment product or strategy" language. A853-54. She likewise rejected the § 7.4 claim on the ground that the Nile Fund Parties "did not show that GenAfrica competed with Nile," without addressing that Kuramo's diversion of NCM's management mandate was competition with NCM's activities. A853.

First, the Chancellor asked only whether GenAfrica was a "public markets investment fund" and held it was not. A854. But § 7.2(b) is not limited to public-markets funds; it reaches "any other investment product or strategy" over which

Kuramo has "control, discretion and/or management control." A2977 § 7.2(b). GenAfrica—a Kenyan asset manager KCM controlled—satisfies that broader clause, which the Chancellor never construed. Seruma's lay acknowledgment that GenAfrica was not a "public markets investment" cannot narrow the provision's defined scope. And Pallan acknowledged NCM's right to manage GenAfrica as late as October 2020. A2069.

Second, § 7.4 prohibits KCM from "own[ing] or directly invest[ing] or own[ing] any business entity in competition with the activities or products of" NCM. A2978 § 7.4. NCM sourced, funded, and was contractually entitled to manage GenAfrica, so KCM's appropriation of that role necessarily placed it in competition with NCM's core activity. The Chancellor's contrary holding rested on a narrow product-market reading the text does not support. NCM is entitled to lost management fees as damages.

Third, Kuramo's affirmative defenses do not save the judgment. The § 7.4 carve-out for investments through "Funds managed by Kuramo," A2978 § 7.4, permits indirect investment; it does not license KCM to own and directly manage GenAfrica. Section 7.2(c) preserves only Kuramo's right to continue using an existing sub-advisor, not to designate a new one for an investment NCM was entitled to manage. A2977 § 7.2(c). And § 7.2(b)'s reference to "future" allocations does not help: NCM's entitlement was a continuing obligation, and Kuramo diverted the role during the membership the provision governs. None of these provisions addresses the breach proved—KCM's diversion of a management role the Agreement assigned to NCM.

III. THE CHANCELLOR ERRED IN FAILING TO FIND THAT KURAMO II GP BREACHED THE KKM LETTER AGREEMENT BY TAKING GOVERNANCE ACTIONS WITHOUT NILE'S REQUIRED CONSENT

The Chancellor erred in failing to find that Kuramo breached the KKM Letter Agreement by protesting Seruma's DG nomination to PHC's board, writing fictitious letters purporting to act in the name of KN Agri, and voting to create a special committee of the KKM Board, and authorizing KKM2 to sue the Nile Fund Parties in Canada. OB.45. The Letter Agreement required unanimity on all voting matters relating to the business of KKM and KKM2 and, absent agreement, gave Seruma's instructions binding effect over Kuramo. A3001. The Chancellor's narrow construction of "voting matters" is legal error reviewable *de novo*. Kuramo echoes that error and adds two arguments that miss the mark, AB.95-96: that the Letter Agreement could not bind its KKM board representatives, who "had their own fiduciary obligations to address Seruma's wrongdoing," and that it would be "perverse" for a court of equity to enforce a "bad-faith fiduciary['s]" instructions "not to sue him." AB.96. Each argument fails.

A. The Meaning of "Voting Matters" Is a Question of Law, and the Chancellor Read It Too Narrowly

The meaning of "voting matters relating to the business of KKM and KKM2" is a question of contract interpretation reviewed *de novo*, and the Chancellor's reading cannot be reconciled with the text. She erred by inserting a limitation the text does not contain, confining "voting matters" to formal ballots and excluding "actions taken on behalf of"—and binding on—KKM and KKM2 through corporate actions. A848-50. That reading drains the clause of its purpose. The KKM Consortium held its PHC interest through a chain of entities, and the governance decisions that mattered were taken at the consortium and intermediate-holding levels, not by formal ballot of KKM or KKM2 stockholders—so the clause would govern almost nothing the parties wrote it to govern if construed as Kuramo suggests. Properly construed to reach those decisions, the clause is breached by unilateral action that disregards its allocation of voting authority. *Israel Disc. Bank of N.Y. v. First State Depository Co. LLC*, 2013 WL 2326875, at *14 (Del. Ch. May 29, 2013).

Nor does the Chancellor's reading account for the breadth of the KKM Letter Agreement's text, which reaches "all voting matters relating to the business of" KKM and KKM2. A3001. "Relating to" is language of breadth that Delaware courts read to express a broad relationship, so the clause reaches any decision bearing on that business, not merely the marking of a ballot. *City of Newark*, 305 A.3d at 680 ("relating to" "sweeps broadly" and is a "paradigmatically broad term"). The tie-breaker confirms the breadth: where unanimity is not reached, "Nile's instructions shall take precedence and be binding on Kuramo," A3001, which presupposes governance direction given and obeyed outside any formal vote. The parties thus made Seruma's position controlling on the conduct of KKM and KKM2's business, not merely on the tallying of votes. *Ringling Bros.-Barnum & Bailey Combined Shows v. Ringling*, 53 A.2d 441, 447 (Del. 1947); 8 Del. C. § 218(c).

Kuramo offers no textual defense of the Chancellor's reading; it simply repeats it. The Chancellor reasoned that the Side Letter Agreement "addresses voting" because its purpose "was to align Kuramo and Nile in actions in relation to the third member of the consortium, Mafuta." A850. But that purpose does not confine "voting matters" to formal ballots: coordinating the consortium's governance against Mafuta is no more a matter of ballot-tallying than any other governance decision. The text controls.

B. The February 9 Letter Defied Nile's Documented Instruction and Requires Reversal on the Existing Record

The first breach of the KKM Letter Agreement —Kuramo's February 9, 2021 letter to PHC's board chairman protesting Seruma's DG nomination and purporting to direct PHC's governance—was a "voting matter relating to the business of" KKM and KKM2 under the construction set out in Section A, A2164; A3001, and the Chancellor's contrary holding rested only on the absence of a ballot, A850; Kuramo's rejoinder that Seruma "never issued any instructions," AB.95, is refuted by his next-day letter asserting "full managerial control" as Managing Member, which supplied the very tie-breaking instruction the parties bargained for. A2220.

C. The Special-Committee Vote and the Canada Lawsuit Authorization Were "Voting Matters" Proven by Admitted Evidence

The second and third breaches arose from the April 14, 2021 board meeting, where Kuramo's representatives voted to constitute a "Special Committee" and to authorize proceedings against Seruma, filed in Canada two days later. Under Section A's construction, both votes are "voting matters relating to the business of" KKM and KKM2 that required Seruma's consent. A3001. The Chancellor rejected these breaches on the premise that "there was no vote" and that the special committee was "not . . . developed factually." A850. Both grounds fail, because the votes are established by admitted documentary evidence Kuramo never rebutted.

The minutes record that Adeosun proposed both resolutions, that "Messrs. Adeosun, Mpinga and Ms. Carrim voted in favo[u]r" while "Mr. Seruma . . . strongly opposed," and that each was "RESOLVED." AR55-6, AR62-63. Kuramo's own chief operating officer then circulated the resolutions "proposed and approved at the April 14, 2021 Board meeting," reproducing them verbatim. AR1. There was a vote—Kuramo's own records say so. Both exhibits were admitted without objection, so the "no vote" finding cannot stand. The special-committee underdevelopment the Chancellor noted is a criticism of presentation, not a finding that the vote did not occur. A850-51.

D. Kuramo's Fiduciary-Duty and "Perverse to Enforce" Defenses Cannot Defeat a Bargained-For Governance Right

Kuramo's two remaining defenses fare no better. The first—that the Letter Agreement could not bind Kuramo's KKM board appointees, who "had their own fiduciary obligations," AB.96—misidentifies the defendant. The Nile Fund Parties do not contend that Kuramo's directors breached the Agreement; they contend that Kuramo II GP, the party that signed it, did. A3001. A contracting party cannot escape its own promise by pointing to the duties of its agents.

The second defense—that enforcement would be "perverse"—is one Kuramo does not actually press. AB.96. It devotes a single rhetorical sentence to the point and tells this Court the "words . . . are better spent elsewhere." *Id.* It fails on its own terms. First, it presupposes the very bad faith the tie-breaker was meant to take out of Kuramo's hands; tie-breakers assign decisional authority ex ante, before anyone's conduct is adjudicated. One that yields whenever the losing party alleges bad faith is no tie-breaker at all—it is a suggestion, enforceable only when the parties agree, and thus only when it is unnecessary. *Ringling*, 53 A.2d at 447. Second, it mischaracterizes the breach. The Letter Agreement did not give Seruma the right to instruct Kuramo "not to sue him," AB.96; it gave Seruma control over the governance of KKM2. Kuramo was free to pursue Seruma in its own name—as it did here—but could not commandeer KKM2 to do so without Seruma's consent. The breach is not suing Seruma; it is using KKM2 to sue him in defiance of his binding authority. Third, the bad-faith premise rests on the same fiduciary-duty findings challenged elsewhere; and even if those findings stood, they would not excuse a contractual breach, because a tie-breaker operates by its terms regardless of who is later vindicated.

IV. THE CHANCELLOR ERRED IN HOLDING KCM'S INTERFERENCE WAS JUSTIFIED BECAUSE IT NEVER ANALYZED WHETHER KCM'S MEANS WERE WRONGFUL UNDER SECTION 767

The Chancellor's § 767 analysis was incomplete because it never addressed the nature of Kuramo's conduct. OB.47-50. The analysis turned solely on motive—that Kuramo acted to "protect its investment from a perceived threat"—without asking whether Kuramo's *means* of interference were independently wrongful. A840. That omission is legal error. Kuramo responds that the Chancellor "concluded factually that Kuramo's actions were justified for a half-dozen reasons," AB.91, but never addresses the dispositive question: whether its *means* were independently wrongful. Kuramo also invokes the "own-contract" defense—that a party cannot tortiously interfere with its own contracts, *id.*—which fails as well.

A. Justification Is a Mixed Question: Facts Are Reviewed for Clear Error, but Whether They Satisfy § 767 Is Reviewed *De novo*

Kuramo recasts the justification holding as a factual finding insulated by clear-error review. That mischaracterizes the inquiry. Justification is a mixed question whose layers are reviewed differently: the findings of historical fact—what Kuramo did, and why—are reviewed for clear error, but "the [Chancellor]'s formulation and application of legal principles" is reviewed *de novo*. *Bhole, Inc. v. Shore Invs., Inc.*, 67 A.3d 444, 449 (Del. 2013). Whether the found facts satisfy § 767 is thus a legal question reviewed without deference. *Cousins v. Goodier*, 283

A.3d 1140, 1147, 1166 (Del. 2022). The Nile Fund Parties do not ask this Court to re-weigh the motive findings; they accept, for this appeal, the finding that Kuramo acted to "protect its investment from a perceived threat." A840. Their challenge is purely legal—whether the found facts satisfy § 767—and because it turns on no disputed fact, clear-error deference has no role to play.

B. The Chancellor Resolved Justification on Motive Alone and Never Reached the "Nature of the Conduct" Factor

Section 767 directs the court to weigh seven factors, the first of which—"the nature of the actor's conduct"—addresses the *means* of interference and is "the chief factor in determining whether the conduct is improper." Restatement (Second) of Torts § 767 cmt. c (1979). Motive is a separate, non-dispositive factor: as this Court held in *Cousins*, "[m]otive . . . is simply one of seven factors," and *WaveDivision* does not "absolutely preclud[e] a tortious interference claim" whenever a defendant points to one proper motive. *Cousins*, 283 A.3d at 1166-67.

The Chancellor recited all seven factors but applied only one. The analysis speaks entirely to Kuramo's purpose: that it "had just discovered that its purported fiduciary was working against its interests"; that its "conduct was defensive"; that its "motive was to protect its investment." A840. Not one clause addresses the means. Kuramo's rejoinder that the court "considered all the evidence," AB.91, misses the point: considering evidence of wrongful conduct is not analyzing, under § 767 comment c, whether the means were improper. The Chancellor invoked

WaveDivision only for its *motive* holding and engaged no authority on wrongful means. The "defensive" label cannot carry the means analysis in any event: the steps that displaced NCM executed a control-seizure plan Kuramo and Mafuta formed before July 2020 and concealed from Seruma, A3106; A1132 (*see* Point V)—premeditation that goes to the "nature of the actor's conduct," § 767 cmt. c, and belies that it was simply "defensive." A839.

This is the same error this Court corrected in *Cousins*, where the Superior Court resolved a tortious-interference claim on motive alone, treating *WaveDivision* as requiring a "sole motive" to interfere. This Court held that motive is one of seven factors and that impropriety focuses on the means. *Cousins*, 283 A.3d at 1163-64, 66. *WaveDivision* confirms that means is a mandatory, separate step: after finding the creditors' motive favored justification, the Court turned to whether the defendants "used improper means." *WaveDivision Hldgs., LLC v. Highland Cap. Mgmt., L.P.*, 49 A.3d at 1168, 1174-75. The Chancellor stopped where both cases required the analysis to continue. That is legal error reviewed *de novo*.

Kuramo does not defend the means analysis on the merits. Instead, it asserts there is "not enough space on this appeal" to explain why the Nile Fund Parties' evidence of wrongful conduct is false, AB.91, and rests exclusively on deference. But the Chancellor made no finding that Kuramo's means were proper—she never analyzed them—so there is nothing to which this Court could defer. Kuramo's silence on the chief § 767 factor spotlights the gap rather than filling it.

C. On the Correct Legal Standard, Kuramo's Wrongful Means Defeat Justification as a Matter of Law

On the correct standard—the one the Chancellor never applied—the means factor is dispositive. "The 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." Restatement (Second) of Torts § 767 cmt. c (1979) (emphasis added). Self-interest does not excuse wrongful means. *Preston Hollow Cap. LLC v. Nuveen LLC*, 2020 WL 1814756, at *17 (Del. Ch. Apr. 9, 2020). Here, Kuramo's means were wrongful in four independent respects, each an example of improper conduct under § 767 comment c.

Fraudulent misrepresentation. As detailed in Point I, Kuramo sent PHC's board and lenders communications on fabricated Feronia KNM letterhead falsely representing that Seruma was merely "an employee of Feronia KNM," while Pallan admitted the fabrication and conceded Kuramo had no management rights. A2162-64; A3015; A3026; A279/492 (Pallan). "A fraudulent misrepresentation is ordinarily an improper means of interference and precludes a defense of justification." *WaveDivision*, 49 A.3d at 1174.

Threats of illegal conduct. Kuramo and Mafuta turned the machinery of the State against Seruma, sending immigration officials to find him and seeking his deportation from the DRC. The court credited his testimony that he "felt unsafe," A797-98, that those "close" to him were being "rounded up," A798 n.163, and that a U.S. Embassy official told him to leave for his safety. *Id.* Turning immigration enforcement against a contracting party is a "threat[] of illegal conduct" under § 767 comment c. *Cousins*, 283 A.3d at 1160. Kuramo's objection that there was no "physical violence," AB.60, misses the point: the Nile Fund Parties allege not assault but that Kuramo made Seruma fear for his safety to clear him from the path to control.

Bad-faith litigation. Gieskes filed a criminal complaint against Seruma in the DRC—after she herself had nominated Seruma for DG at the February 9 board meeting, A2899; A2507-08, and after Mpinga had confirmed "[o]nly [Seruma] has the right to appoint directors." A2177. Kuramo also commenced a Canadian suit in KKM2's name without authorization, as Point III explains. Both are wrongful under § 767. Restatement (Second) of Torts § 767 cmt. c (1979).

Economic coercion. Kuramo wielded the 2020 Bridge Loan as the "main lever" over KN Agri and invoked the wrong agreement to demand redemption in the teeth of a five-year lock-up. A2160. Economic pressure need not be extreme to be wrongful. *Preston Hollow Cap. LLC v. Nuveen LLC*, 2020 WL 1814756, at *18 n.260 (Del. Ch. Apr. 9, 2020); Restatement (Second) of Torts § 767 cmt. c (1979). Together, these means—fraud, threats, bad-faith litigation, and economic coercion—are each independently wrongful and collectively "preclude[] a defense of justification." *WaveDivision*, 49 A.3d at 1174.

Section 767 does not permit a defendant to convert wrongful means into lawful ones by pointing to the end they served. Because each category of Kuramo's conduct is independently wrongful under comment c, the manner of its interference forecloses justification as a matter of law.

D. Kuramo's Remaining Defenses Do Not Save the Judgment

Kuramo's "own-contract" defense fails at the threshold because KCM is not a party to the NGFF or KN Agri agreements—their counterparties are Kuramo Master Fund and Kuramo Agri Vehicle, respectively. OB.50. And even if KCM were a party, its bad-faith conduct forfeits the defense under Delaware's bad-faith-affiliate exception. *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).

Finally, Kuramo's point that the Nile Fund Parties dropped their tortious-interference claims as to the DFI Lenders and other third parties, AB.91, is correct but immaterial. The surviving claim rests on Kuramo's interference with the NGFF and KN Agri agreements—the breach established under Point I—and depends on no third-party relationship. Narrowing the claim sharpens it.

V. THE CHANCELLOR ERRED IN DISMISSING THE CIVIL CONSPIRACY CLAIM FOR LACK OF A PREDICATE TORT

The Chancellor dismissed the conspiracy claim for one reason: having rejected the tortious-interference claim, she held the conspiracy claim "fail[ed] for lack of a valid predicate." A843. She never reached whether a conspiracy existed. The dismissal is therefore a purely derivative legal ruling, reviewed *de novo*, that stands or falls with Point IV. Because the interference claim should be reinstated for the reasons stated in Point IV, the predicate is restored and the dismissal cannot survive. Kuramo offers no independent defense. And because neither the Chancellor nor Kuramo reached the Kuramo-Mafuta confederation on the merits, no alternative ground supports affirmance.

On remand, the record supports each element of civil conspiracy—confederation, an unlawful act in furtherance, and resulting damage—with each conspirator vicariously liable for acts in furtherance. *Allied Cap. Corp. v. GC-Sun Hldgs., L.P.*, 910 A.2d 1020, 1036, 1044 (Del. Ch. 2006); *Nicolet, Inc. v. Nutt*, 525 A.2d 146, 147 (Del. 1987).

- ***Confederation**:* Kuramo (through Adeosun and Pallan) and Mafuta (through Mpinga) combined to seize "control" of Feronia KNM and PHC—an objective that had "always been a fundamental facet to [their] arrangement." A3107; A1132.

- ***Unlawful Act**:* the confederation committed the wrongful means catalogued in Point IV, each independently wrongful for the reasons given there. A2178; A2176; A2263; A2506-09; A2900-24; A276-77/480-81 (Pallan); A2160.

- ***Damages****:* the co-conspirators seized PHC, installed loyalists in NCM's place, and stripped the Funds of their management rights and fees. A284/510-11; A3846.

Kuramo's miscellaneous remaining points fail. *First*, Kuramo recasts the Mafuta "path to control" as an objective Seruma consented to years earlier. AB.49. He did not: the arrangement was formed before July 2020 and concealed from Seruma, whom Mafuta removed from an email chain before reiterating the plan. A1132-33. And the unlawful acts occurred in and after February 2021—they could not have been authorized years earlier. *Second*, a shared objective, AB.49, AB.91, does not make Kuramo and Mafuta a single actor; even commonly owned enterprises "cannot" escape liability for collaborating "on a common illegal scheme." *Allied Cap. Corp.*, 910 A.2d at 1044. The dismissal should be reversed and remanded for the merits the Chancellor never reached.

VI. THE CHANCELLOR ERRED IN APPLYING ENTIRE FAIRNESS BECAUSE THE AGREEMENTS' FIDUCIARY-MODIFICATION PROVISIONS DISPLACE THE DUTY OF LOYALTY AND NO NILE FUND PARTY STOOD ON BOTH SIDES OF THE ASSET SALE

The Chancellor erred in applying entire fairness for four independent reasons: (i) the governing agreements' fiduciary-modification provisions displace the duty of loyalty for discretionary conduct under 6 Del. C. § 18-1101; (ii) no Nile Fund Party stood on both sides of the Asset Sale, so the entire-fairness trigger was not satisfied; (iii) even under entire fairness, the Challenged Transactions satisfy both fair dealing and fair price; and (iv) Kuramo's unclean hands bar its recovery. OB.57-71. Kuramo defends the ruling on deference—urging that Seruma conceded fiduciary duties at trial, that his personal benefit conclusively triggers entire fairness, that the fair-dealing and fair-price findings are factual, and that unclean hands cannot apply because the court found his conduct justified. AB.66-81. Each defense fails, and the four subsections below take them in turn.

A. Entire Fairness Is Foreclosed by the Governing Agreements

The entire-fairness ruling is foreclosed for two independent reasons: (i) the discretion provisions eliminate the duty of loyalty altogether, and (ii) even if the conflict-resolution regime governs, the court's equation of "fair and reasonable" with entire fairness was legal error. OB.59-61. Each ground is addressed in turn.

1. The NCM Agreement's Discretion Provisions Eliminate the Duty of Loyalty

Kuramo defends the entire-fairness ruling by recasting a legal question as factual and asking for deference. But the Chancellor held, as a matter of law, that the agreements made no difference, reasoning that "the analysis would be the same under the contractual standard." A823 n.283. That holding is reviewed *de novo*, and it is wrong. The LLC Act makes freedom of contract the governing principle, permitting agreements to expand, restrict, or eliminate fiduciary duties. 6 Del. C. § 18-1101. Sophisticated investors in alternative entities are charged with reading their constituent documents to understand the limits on their rights. *Holifield v. XRI Inv. Hldgs. LLC*, 304 A.3d 896, 923 (Del. 2023). Here, the NCM Agreement eliminated the duty of loyalty for discretionary conduct.

Section 13.3(c)(i) permits a Covered Person exercising granted discretion to "consider only such interests and factors as it desires, including its own interests," and § 13.3(c)(ii) bars any "other or different standard imposed by this Agreement or other applicable law." A2985. Together they eliminate the duty of loyalty in all but name: a fiduciary who may lawfully consider only its own interests, and who owes "no duty or obligation to give any consideration" to others, has no loyalty obligation left to breach. *Related Westpac LLC v. JER Snowmass LLC*, 2010 WL 2929708, at *8 (Del. Ch. July 23, 2010) (dismissing claim where agreement left party free to give consent "as it chose, in its own commercial interest," because implying a fiduciary duty of reasonableness "would nullify the parties' express bargain"). Entire fairness is precisely the "other or different standard" the clause forbids. If the Challenged Transactions fell within Seruma's granted discretion, the duty on which the court premised entire fairness did not exist.

That discretion reaches the very conduct at issue. Kuramo contends § 13.3(c)(i) covers only "discretion[ary] or . . . similar authority" and so does not reach the Challenged Transactions. AB.70. But the Managing Member's authority *is* granted discretion—the NCM Agreement vests Seruma with the "right, power and authority" to manage the business, A2974 § 5.2, and identifies no transaction requiring member approval. The Challenged Transactions thus fell within that discretion, where § 13.3(c)(ii)'s bar on any "other or different standard"—entire fairness included—controls. A2985.

Kuramo's contention that § 13.3(c)(i) does not "even refer to fiduciary duties," and so cannot satisfy the requirement that a waiver be "plain and unambiguous," misstates what that standard requires. AB.70. Delaware demands clear language, not the talismanic words "fiduciary duty." A clause entitling the Managing Member to "consider only such interests and factors as it desires, including its own interests," coupled with an express bar on any "other or different standard," is as plain an elimination of the duty of loyalty as the LLC Act permits, because a duty to prefer the members' interests cannot coexist with a contractual right to consider only one's own. *See Cygnus Opportunity Fund, LLC v. Wash. Prime Gp., LLC*, 302 A.3d 430, 445 (Del. Ch. 2023). That language is unambiguous, so the canon Kuramo invokes—resolving ambiguity in favor of preserving fiduciary duties—never comes into play. Kuramo's reliance on *In re P3 Health Group Holdings, LLC*, 2022 WL 16631000 (Del. Ch. Nov. 2, 2022), is misplaced because, unlike here, P3 did not involve a grant of discretion over the challenged decision. Section 13.3(c) does. It applies when a Covered Person exercises granted discretion, permits the decisionmaker to "consider only such interests and factors as it desires, including its own interests," and bars any "other or different standard." A2985. That paired language leaves no room to import entire fairness as a loyalty-based constraint on discretionary conduct. And whether § 13.3(b)'s "fair and reasonable" conflict-resolution standard supplies an independent, non-superfluous office for that provision is a separate question, answered in Section A.2 below. A2984.

Kuramo's objection that the Nile Fund Parties "never once argued § 13.3(c)(i)" below, AB.70, mischaracterizes the record and fails as a matter of law. The Chancellor decided the contractual-standard question in the alternative, construing § 13.3(b)'s "fair and reasonable" requirement as the equivalent of entire fairness. A823 n.283. A court that decides an issue in the alternative has joined issue on it, and forfeiture has no application. *In re Tesla, Inc. Deriv. Litig.*, 351 A.3d 1005 (Del. 2025) (rejecting waiver where trial court "understood" and "addressed in its decision the issues raised on appeal"). The Nile Fund Parties preserved their contractual-standard arguments at trial. A4215-16 & n.239; A4238.

Kuramo's remaining waiver theory—that Seruma "conceded" owing fiduciary duties at trial—fares no better. Whatever Seruma said about contractually defined duties, the controlling question—whether a fiduciary duty of the kind entire fairness enforces exists at all—is one of law fixed by the agreements under § 18-1101, not by a litigant's characterization. *Bank of N.Y. Mellon v. Commerzbank Cap. Funding Tr. II*, 2011 WL 3360024, at *8 (Del. Ch. Aug. 4, 2011) (rejecting argument that a party's characterization of contract question was a binding admission, because "judicial admissions apply only to admissions of fact, not to theories of law, such as contract interpretation"). Kuramo's separate contention that Seruma's investment-adviser status imposes non-waivable duties is addressed below.

2. The Chancellor's Application of Entire Fairness Was Legal Error

Even if the conflict-resolution regime governed, reversal would independently follow, because the court wrongly equated § 13.3(b)'s "fair and reasonable" standard with entire fairness. A823 n.283. Section 13.3(b) requires the Covered Person to resolve a conflict by "considering . . . the relative interest of each party (including its own interest) . . . and the benefits and burdens relating to such interests, any customary or accepted industry practices, and any applicable generally accepted accounting principles." A2984-85. That is a process standard—it obligates the manager to *consider* interests, not to ensure they prevail—whereas entire fairness is an objective, burden-shifting inquiry into "fair dealing" and "fair price." *Weinberger v. UOP, Inc.*, 457 A.2d 701, 711 (Del. 1983). Collapsing the two relieved the court of asking whether Seruma followed the bargained-for process in good faith. Reading § 13.3(b) as a distinct process standard also gives it an independent office and avoids the superfluity Kuramo invokes: § 13.3(c) confers discretion subject to no additional standard, while § 13.3(b) supplies the process for resolving a conflict under that subsection.

Kuramo's contention that statutory investment-adviser duties independently support heightened review does not rescue the judgment. The Investment Advisers Act imposes a federal fiduciary duty on statutory "investment advisers." 15 U.S.C. § 80b-2(a)(11). The authority Kuramo cites locates that duty in the wrong statute, attributing Section 206's adviser obligation to the Investment Company Act rather than the Investment Advisers Act. AB.67 n.298.

But even setting that error aside, the Act does no work here for two independent reasons. First, the IAA does not displace state-law fiduciary standards where, as here, Nile presses only state-law claims. *See Goodrich as Trustee of Robert D. Goodrich Revocable Tr. v. Bank of Am. N.A.*, 136 F.4th 347, 355 (D.C. Cir. 2025) (rejecting investor's IAA-based argument that advisers "as fiduciaries, may never limit their duties" and resolving the advisers' duties by reference to "state law and the parties' contract"). The conduct adjudicated was Seruma's exercise of authority as Managing Member under the LLC agreements—a Delaware LLC governance question, not securities advice to a retail investor—governed by the NCM Agreement's fiduciary-modification provisions under 6 Del. C. § 18-1101(c).

Even on its own terms the statutory-adviser duty runs to the fund, not to its investors, and so cannot supply the investor-protective standard Kuramo seeks. *See Goldstein v. S.E.C.*, 451 F.3d 873, 881 (D.C. Cir. 2006) (holding "adviser owes fiduciary duties only to the fund, not to the fund's investors"). Whatever federal duty the statute imposes is thus owed to the fund, whose interests the agreements' standards already govern. A statutory-adviser label cannot convert a contractual LLC-governance question into one of federal securities law.

Kuramo's reliance on *Young Women's Christian Assoc. of Rochester & Monroe County v. Hatteras Funds, LP*, 356 A.3d 459 (Del. Ch. 2026) does not change the analysis. The case stands only for the general proposition that federal securities laws impose fiduciary duties on investment advisers, which is not disputed here. It does not hold that the IAA overrides Delaware LLC agreements or displaces 6 Del. C. § 18-1101.

B. Entire Fairness Was Not Triggered by the Facts

If the Court concludes that a fiduciary duty of loyalty survived the agreements, the entire-fairness trigger still fails. Whether the trigger is met is a question of law reviewed *de novo*: it asks whether the established facts satisfy the legal standard for entire fairness, and the Chancellor's contrary conclusion warrants no deference. On that review, the trigger fails for three independent reasons: (i) no Nile Fund Party stood on both sides of the Asset Sale; (ii) the "personal benefit" finding conflates two distinct questions; and (iii) the Ring-Fence Agreement barred dilution, not restructuring. Each is addressed in turn.

1. No Nile Fund Party Stood on Both Sides of the Asset Sale, and Multiple Independent Layers of Approval Preclude the Trigger

Kuramo recasts the entire-fairness trigger as a finding of fact reviewed for clear error under *Levitt*. AB.66. That framing is wrong. The question whether a fiduciary "stood on both sides" of the transaction, AB.73—and, as a threshold matter, which transaction is the proper unit of analysis—is a legal characterization of undisputed facts subject to *de novo* review, not a factual finding insulated by the deferential standard. *Boardwalk Pipeline P'rs, LP v. Bandera Master Fund LP*, 288 A.3d 1083, 1111 (Del. 2022). Accepting the Chancellor's factual findings solely for purposes of this appeal, the Nile Fund Parties submit that those facts, correctly characterized, place no Nile Fund Party on both sides of the relevant transaction.

Multiple independent layers of approval confirm the point. The Asset Sale was approved by Feronia Inc.'s independent directors, implemented by an independent Proposal Trustee, sanctioned by a Canadian court, and supported by

Kuramo itself—indicia that no Nile Fund Party stood on both sides. A420-421/827-828; A1892-1916; *see also In re Trados Inc. S'holder Litig.*, 73 A.3d 17, 44 (Del. Ch. 2013); *Orman v. Cullman*, 794 A.2d 5, 22 (Del. Ch. 2002). The independent, court-supervised character of that process is developed in Section C. Kuramo's contention that its support was conditioned on a Series B placement, AB.74, is immaterial. That qualification concerns the downstream allocation within the Nile entities—a fair-dealing question—not whether any Nile Fund Party stood on both sides of the Asset Sale.

The Chancellor's threshold error was to misidentify the transaction. The Asset Sale—the court-supervised purchase of PHC's assets through the Canadian bankruptcy proceeding—is the transaction Kuramo challenged. A825-26. Kuramo's response is to recharacterize it: the conflict, it says, lies not in the Asset Sale—which Kuramo supported—but in how "Seruma allocated the benefits of that acquisition within the Nile Funds." AB.73. That recharacterization collapses analytically distinct transactions. The entire-fairness trigger requires that the fiduciary "stand on both sides" of *the specific transaction under review*. *eBay Domestic Hldgs., Inc. v. Newmark*, 16 A.3d 1, 38 (Del. Ch. 2010) . On the Asset Sale, no Nile Fund Party stood on both sides: Feronia KNM—not Seruma personally—acquired PHC's equity, and the counterparty was Feronia Inc. as a debtor-in-possession, represented by independent directors and a court-appointed

Proposal Trustee. The downstream allocation of interests is a separate transaction with separate parties; whether it favored Seruma bears on the contractual "fair and reasonable" standard, not on whether entire fairness applies. Confronted with that showing, the Chancellor relocated the "conflict" to the downstream allocation and applied entire fairness to the Asset Sale based on findings about that allocation, as though the two were one. A826. That conflation is legal error reviewed *de novo*. A controller's general interest in the *outcome* of a transaction is not the same as standing on *both sides* of it; if it were, the "both sides" requirement would be a dead letter.

2. The "Personal Benefit" Finding Conflates Two Questions

Kuramo makes the centerpiece of its brief Seruma's "use[] [of] his fiduciary authority to grant himself" a personal benefit the Chancellor called "a pretty egregious" conflict. AB.72. But that benefit was not truly "personal." The assets were transferred to KN Agri, a subsidiary of NGFF. The purported benefit came to all of the investors in NGFF ratably from the downstream allocation. For Kuramo's part, it had the right to increase its economic participation under the contemplated 60/40 split assuming and based on the allocations from Kuramo funding and converting the Bridge Loan. A566/1290 (Lamek). That it was not shared ratably based on the 60/40 split resulted directly and exclusively from Kuramo's failure to fund and convert the Bridge Loan and its subsequent seizure of PHC. A424-25/843-44 (Seruma); A273/465 (Pallan).

3. The Ring-Fence Agreement Prohibited Dilution, Not Restructuring, and the September 2020 Negotiations Superseded Its Segregation Structure

Kuramo's ring-fence argument proves too much. The Nile Fund Parties accept the September 2019 arrangement for what the Chancellor says it was, *i.e.*, it protected Kuramo's ***existing interest in KN Agri*** from being diluted by an in-kind contribution of Ugandan farmland of contested value. A803-05. It was not, however, a covenant freezing the series architecture for all time, and did not bar the parties from later restructuring that architecture by mutual agreement.

The September 2020 negotiations superseded that understanding—and it was *Kuramo* that proposed the integration. On September 11, 2020, Pallan sent Seruma a "Kuramo Proposal for KN Food Fund," expressly proposing to include Mpala and depicting the funds merged into one entity. A1886-90; OB18-19. A party that itself proposes to pool Mpala and PHC cannot recast the counterparty's implementation of its own proposal as disloyal evasion of the earlier segregation structure.

C. Even Under Entire Fairness, Both Prongs Were Satisfied

Even assuming the entire-fairness standard applied, both prongs of *Weinberger v. UOP, Inc.*, 457 A.2d at 711, were satisfied. On fair dealing, the documentary record establishes a negotiated 60/40 allocation, confirms that

Kuramo's own funding default—not any disloyalty—produced the non-ratable outcome, and shows a timely, externally supervised process to which Kuramo acquiesced. On fair price, the contractual valuation-finality provision foreclosed a fair-price inquiry altogether, and in any event the ascribed value was supported by four independent assessments. The Chancellor's contrary conclusions rest on legal and factual errors that warrant reversal, as the following subsections demonstrate.

1. Fair Dealing

The Chancellor found "no negotiation concerning the events that ultimately led Seruma to claim a 60/40 split." A828. The documentary record is directly contrary: Seruma's October 27, 2020 email memorializing the "estimation of percent ownership" at 60/40, A2072; A268-69/447-450 (Pallan); the notarized organizational charts Kuramo circulated to PHC's lenders attesting that the "content of the document is correct," A2137; and DLA Piper's testimony that the 60/40 numbers were mentioned during discussions with Seruma, in an email from Pallan, and in the equity support letter, A564-65/1284-85 (Lamek)—all establish a negotiated allocation used without objection for nearly a year. A finding of "no negotiation" is unmoored from the record.

Kuramo's contrary evidence does not withstand scrutiny. Kuramo points first to Pallan's rejection of certain org charts, but Pallan rejected charts that misidentified Kuramo's existing *Series B* interest—not the prospective 60/40 allocation. AB.57.

The two measure different things: the Series B percentage captures Kuramo's current interest in a series whose sole asset had been rendered worthless by the Feronia bankruptcy, while the 60/40 figure is the go-forward allocation of KN Agri premised on the parties' new contributions—Mpala for Nile and the converted Bridge Loan for Kuramo.[1] The emails Kuramo quotes (B1141, B1145) address only the former; they are consistent with, not contrary to, the negotiated 60/40 split the record reflects. A2072; A2137. Nor does it matter that a Kuramo employee, rather than Pallan, executed one of the notarized charts: Kuramo circulated those charts to its lenders, under notarial attestation that their "content…is correct," and cannot now disown a representation it made to third parties to secure a debt restructuring. A2137; A268-69/447-450 (Pallan). And Kuramo's charge that the figures are "uncited" inventions is refuted by the identified, dated writings on which they rest. A2072; A2137.

Kuramo's own contemporaneous statements confirm the same allocation. On the September 16, 2020 call, Pallan acknowledged that Nile would hold a "majority" of KN Agri—an expectation arithmetically incoherent unless Mpala was credited

[1] The percentage misleads for a more fundamental reason. KN Agri is an open-ended, marked-to-market fund, not a closed-end vehicle in which fixed ownership percentages persist. A member's interest tracks net asset value, so once the series' sole asset was rendered worthless, any nominal percentage in it was worth nothing. *See* OB.18, 31.

near its ascribed value. A1928:4-11. Against the $15 million Bridge Loan facility Kuramo was to convert, a Nile "majority" is impossible if Mpala counted for only $2.4 million; it is achievable only if Mpala was valued at approximately $22 million, as the parties' 60/40 math assumed. A286/518-520. The reliability of that valuation is defended below; for present purposes, Pallan's "majority" admission presupposes the very negotiated valuation Kuramo now denies.

a. Kuramo's Own Default Explains the Non-Ratable Outcome

The Chancellor held that the 60/40 split was "aspirational" because it was contingent on Kuramo's fully funding the Bridge Loan and converting it to equity. A812. The Nile Fund Parties agree—and that concession defeats Kuramo's position. If the split was contingent on full funding and conversion, then Kuramo's failure to fund and convert explains the non-ratable outcome. A566/1290 (Lamek); A424/843 (Seruma). Pallan committed in writing to "convert the loan into equity at the same basis," A1883 (*see* Point IX), and Kuramo did neither. The non-ratable outcome is the consequence of Kuramo's own default.

b. Timing and Initiation

On timing, the Chancellor found that "Seruma timed his transfer of Mpala to occur before the Restructuring Transaction." A828. The evidence is contrary: the parties discussed consolidating PHC and Mpala right "from the outset of the relationship," A367/732-33 (Seruma), and Seruma contributed Mpala in October

2019 in furtherance of that plan, A368/737 (Seruma). Kuramo's "opportunistic" characterization rests on a separate, later transaction—Seruma's October 2020 transfer of his personal Mpala interest from KN Agri Series C to NGFF—not the October 2019 contribution of Mpala into KN Agri Series C addressed above. AB.76.

c. External Process Protections

On external process, the court found "no independent structure or approval process." A829. That conclusion is patently irreconcilable with the undisputed record. The Asset Sale was approved by Feronia Inc.'s independent directors, A421/828 (Seruma); led by a court-appointed Proposal Trustee in Companies' Creditors Arrangement Act proceedings, A420/827; and ***approved by the Supreme Court of British Columbia, which vested ownership "absolutely" in Feronia KNM "free and clear" of claims***, A2290. Kuramo received notice and did not object. A1901 ¶ 28. A public, court-supervised bankruptcy proceeding is an "independent structure," and whether it qualifies is a legal characterization of undisputed evidence reviewed *de novo*. That no committee was Kuramo-specific bears on the weight of these protections, not their existence—and the court was not free to disregard them.

d. Kuramo Acquiesced

Kuramo's own conduct bars its challenge under acquiescence and refutes its charge that Seruma proceeded by stealth. The doctrine applies where 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." *Cancan Dev., LLC v. Manno*, 2015 WL 3400789, at *24 (Del. Ch. May 27, 2015). Kuramo reviewed audited statements reflecting the Mpala valuation, signed and notarized organizational charts reflecting the 60/40 split, and raised no objection until February 2021. A2137; A268-69/447-450 (Pallan). That participation cannot be recharacterized as concealment; it answers both the secret-maneuver narrative and any suggestion that the process denied it the protections fair dealing requires.

2. Fair Price

a. The Contractual Valuation-Finality Provision Required an Implied-Covenant Analysis, Not a Fair-Price Inquiry

On fair price, the threshold question is not what Mpala was worth, but who the parties agreed would decide. 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." A2203 § 3.7(e). Given that provision, the Chancellor should have asked only "whether a party breached the implied covenant of good faith and fair dealing." *PECO Logistics, LLC v. Walnut Inv. P'rs, L.P.*, 2015 WL 9488249, at *11 (Del. Ch. Dec. 30, 2015). Instead, the court proceeded to a fair-price analysis the contract foreclosed. *Boardwalk Appeal*, 288 A.3d at 1111.

b. Even If Fair Price Is Reached, the Court's Dismissal of All Four Valuations Lacked Support

Even if fair price is reached, the Chancellor's rejection of four independent assessments, A831—by Barfric, MAMM & Associates, Cohen & Co., and BDO—bracketing the \$22.5 million ascribed value (ranging from \$20.1 to \$30.9 million) was error. Kuramo attacks each valuation without ever explaining what value would have been "fair." AB.80 n.350. But a party challenging fair price must do more than criticize the other side's evidence—it must show the price was actually unfair. *In re Appraisal of Dole Food Co.*, 114 A.3d 541, 557-58 (Del. Ch. 2014). Kuramo's contention that the assessments are not truly independent—that one was an audit that adopted the Barfric figure and the others extrapolated from it, AB.80 n.350—does not establish unfairness; that several professionals, applying recognized methods, converged on a consistent value corroborates the ascribed price rather than impeaches it. And Kuramo's *own* expert, Muganwa, did not challenge the Barfric Report: she confirmed its methodology was valid and testified that applying the Barfric price-per-acre in her own model yielded a land value of \$19,638,276 before adjustments. A3873/47; A3878/69; A3921-22/245-48 (Muganwa). That figure—derived by Kuramo's own expert and approaching the low end of the independent range—substantially confirms the ascribed value rather than identifying an unfair price. A fair-price finding cannot rest on the premise that every valuation is unreliable when the opposing party's own expert confirmed the number, and the court supplied no valuation of its own. A831.

Finally, the Chancellor's own remedy confirms that Kuramo's PHC interests were never diluted by Mpala. The court restored "the bargain Seruma told Kuramo he was executing—where Kuramo holds 97.16% of KN Agri Series B, and KN Agri Series B holds Feronia KNM, which holds the PHC asset . . . [and] Mpala remains ring-fenced in KN Agri Series C." A861-62. The dispute was thus about the *internal allocation* of the acquired value, not whether Kuramo suffered the dilution the September 2019 agreement guarded against—confirming that the fair-price inquiry was misdirected from the outset.

D. Unclean Hands Bars Kuramo's Recovery

Kuramo never answers the Nile Fund Parties' unclean-hands defense. OB.70-71. The closest it comes is its defense of the Chancellor's separate justification ruling, where it argues that Kuramo's actions were justified and that the court rejected the Nile Fund Parties' wrongful-means evidence on the facts. AB.91-92. That does not answer the equitable point: if the Court holds that Kuramo's means were wrongful under § 767, the same conduct independently supports unclean hands. Thus, unclean hands independently bars Kuramo's recovery.

The Nile Fund Parties preserved this defense, arguing below that Kuramo's "fraudulent misrepresentation[s] that they owned and controlled Feronia KNM and

PHC," together with their "utter disregard" for the legal system "under the guise of self-help," each provided "an independent basis by which to find that unclean hands bar their claim[s]." A4152; *see also* OB.70-71.

The wrongful means catalogued in Point IV are the very mechanism by which Kuramo took the control its counterclaim now asks equity to preserve—"extra-contractual self-help" that bars relief. *Macrophage Therapeutics, Inc. v. Goldberg*, 2021 WL 2582967, at *1 (Del. Ch. June 23, 2021); *Buckeye P'rs, L.P. v. GT USA Wilm., LLC*, 2020 WL 2551916, at *9 (Del. Ch. May 20, 2020) (self-help is any "attempt to redress a perceived wrong by one's own action rather than through the normal legal process"). That the Chancellor viewed those actions as "defensive" and as "actions [Kuramo] reasonably believed were necessary to secure its investment," Op. 71, does not save them: self-help is improper even when a party's actions are "not wholly unreasonable" and "at least understandable," because the party must instead seek relief from the court. *See Gould v. Gould*, 2012 WL 3291850, at *13 (Del. Ch. Aug. 14, 2012), *judgment entered*, 2012 WL 6621742 (Del. Ch. Aug. 14, 2012) (defendant who had the "opportunity to . . . seek a [TRO]" "should have" sought "relief in this Court . . . rather than engaging in self-help").

Equity will not let Kuramo keep what it seized through those means. A litigant who "engages in reprehensible conduct in relation to the matter in controversy . . . forfeits his right to have the court hear his claim." *Nakahara v. NS*

1991 Am. Tr., 739 A.2d 770, 791 (Del. Ch. 1998). The doctrine's purpose is "protection of the reputation of equity itself." *In re Niki and Darren Irrevocable Tr.*, 2020 WL 8421676, at *1 (Del. Ch. Feb. 4, 2020). Kuramo's misconduct is not collateral to its counterclaim; it is the source of the very position the counterclaim seeks to vindicate. Those bad acts are "a part of the cause of action itself." *Id.*

That ends Kuramo's relabeling. With justification reversed under Point IV, the rejoinder that Kuramo acted to protect a legitimate interest while Seruma acted in bad faith collapses. Unclean hands follows from the wrongful-means determination without reweighing historical fact: the same conduct that defeats justification under § 767 forfeits equitable relief under *Nakahara*. Even if Kuramo's counterclaim would otherwise have merit, a claim rooted in its own inequitable conduct forfeits equitable relief "regardless of its merit." *Nakahara*, 739 A.2d at 792; *Edmondson v. Oakes*, 2026 WL 559366, at *9 (Del. Ch. Feb. 27, 2026) (unclean hands barred claim where party initiated action to "secure judicial recognition of his control over the Company" where "that control was manufactured through deception.")

If the Court affirms the Nile Fund Parties on Point VI(A)-(C), it need not reach this argument. But to the extent the judgment rests on the fiduciary-duty counterclaim, unclean hands bars recovery, lest the judgment ratify the very self-help equity condemns. The Court should reverse the fiduciary-duty ruling or, in the alternative, hold that both entire-fairness prongs were satisfied and that Kuramo's unclean hands bar equitable recovery.

VII. THE DISGORGEMENT ORDER MUST BE REVERSED BECAUSE IT RESTS ENTIRELY ON THE ERRONEOUS ENTIRE-FAIRNESS FINDING

The disgorgement of advancement and indemnification rests entirely on the finding that Seruma acted in subjective bad faith—a finding derivative of the fiduciary-duty analysis challenged in Point VI. OB.72. Kuramo responds that (i) the finding is entitled to deference, and (ii) Seruma "advanced almost $6 million in client assets from NGFF to fund his personal defense below." AB.97-98.[2] Both fail. The order falls with the entire-fairness ruling on which it depends (Section A); and even if that ruling stood, the advancement and indemnification rights are bargained-for entitlements the bad-faith finding cannot extinguish (Section B).

First, the order is purely derivative: it rests solely on the bad-faith finding, so reversing the entire-fairness ruling challenged in Point VI erases the predicate and the disgorgement order with it.

Second, the order independently fails on the agreements' own terms. The KN Agri and NGFF Agreements entitle the Managing Member to indemnification for litigation arising from good-faith acts reasonably believed to be in the funds' best interests, A2194-95 § 2.7; A2847 § 5.5.1, and authorize advancement of litigation fees subject to an undertaking to repay if indemnification proves unavailable, A2847

[2] The Chancellor made no finding concerning what amounts were advanced to the Nile Fund Parties to fund their defense, let alone what amounts were advanced to fund Seruma's "personal defense."

§ 5.5.2; A2195 § 2.8. Advancing those fees from NGFF was thus not a misappropriation of "client assets" but the exercise of a bargained-for right; that Kuramo supplied much of NGFF's capital does not make that right wrongful. Critically, the provisions do not condition advancement on a judicial finding of good faith: the Managing Member's discretion to advance is the trigger, and the repayment undertaking—not a pre-advancement adjudication—is the protection. By treating its bad-faith finding as self-executing, the court collapsed the entitlement into the merits and ordered disgorgement the agreements do not permit. Nor is the point Seruma's alone: these are bargained-for rights of NGFF as Managing Member and the other defendants Kuramo sued—not of Seruma personally—and collapsing them into one actor disregards the distinct interests Delaware law accords each. Those rights should be restored on remand.

VIII. THE IN-KIND REDEMPTION ORDER MUST BE VACATED BECAUSE THE LLC ACT REQUIRES EXPRESS AUTHORIZATION THAT NO AGREEMENT PROVIDES AND CORPORATE SEPARATENESS BARS THE REMEDY[3]

The in-kind redemption order was erroneous for four independent reasons: (i) under 6 Del. C. § 18-605, a member has "no right to demand and receive any distribution from a limited liability company in any form other than cash" absent an express contrary agreement; (ii) no provision in the governing agreements supplies that authorization; (iii) corporate separateness independently bars the remedy because Feronia KNM—not NCM—owns the PHC shares; and (iv) equity follows the law and cannot confer a property right that statute and contract withhold. OB.74-79. Kuramo responds that the order was within the Chancellor's equitable discretion and that Section 15.6 and the Series B Supplement authorize an in-kind redemption. AB.102. Each contention fails.

A. The Chancellor Inverted the Statutory Default

The threshold question is one of statutory construction reviewed *de novo*, not the abuse-of-discretion deference Kuramo invokes. Section 18-605 makes cash the default: absent an express contrary agreement, a member has no right to demand a distribution in any form other than cash. The Chancellor inverted that default,

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[3] [3]The initial rescission remedy was superseded by the in-kind redemption remedy under review. Nile does not, therefore, address rescission but does not concede such a remedy would be appropriate either.

faulting the agreements for failing to "explicitly prevent" an in-kind redemption rather than asking whether they "explicitly authorize" one. The statute demands the latter, and whether the agreements supply that entitlement is a question of contract construction decided without deference.

The agreements reinforce that default at every turn. OB.75-76. Every provision Kuramo invokes either confirms the cash default or confers a discretionary prerogative on the Managing Member; none gives Kuramo a right to demand a distribution in property other than cash. The NGFF Agreement is illustrative: it permits the Managing Member to distribute in cash or in kind, but the very next sentence provides that "[n]o Member shall, however, have the right to receive distributions in property other than cash." A2841 § 3.14.2. That distinction—between a manager's discretion to pay in kind and a member's right to demand it—is dispositive.

Against that default, Kuramo's only two affirmative provisions—Section 15.6 of the NCM Agreement and the Series B Supplement—do not bear the weight it places on them.

First, Section 15.6 does not confer an in-kind right merely because it refers to "redeemed assets." A2992-93. It is a separation provision allocating what stays with Nile when Kuramo exits: "track records, assets under management, and all other assets contributed, owned, held or in the name of the Company, but excluding redeemed assets, shall remain with Nile or its Assignee." A2992-93; A4269-70 § 15.6. It says nothing about the *form* of any redemption. And because the drafters specified distribution mechanics elsewhere yet created no in-kind right here, the omission was deliberate. *Norton v. K-Sea Transp. P'rs L.P.*, 67 A.3d 354, 364 (Del. 2013); *Fortis Advisors LLC v. Medicines Co.*, 2019 WL 7290945, at *4 (Del. Ch. Dec. 18, 2019).

Second, the Series B Supplement does not entitle Kuramo to demand an in-kind redemption. It provides only that "withdrawal may be completed by the Managing Member by an in-kind distribution." B1205. That vests discretion in the Managing Member; it does not give Kuramo a right to compel one, for a permissive grant to the manager is not a compellable right in the member. *Ryan v. Buckeye P'rs, L.P.*, 2022 WL 389827, at *7 (Del. Ch. Feb. 9, 2022); *Fortis*, 2019 WL 7290945, at *4. Kuramo's sole right as a Series B holder is to redeem for the redemption value. The order also overrides the valuation-finality provision: because "[a]ll values assigned to . . . assets and liabilities by the . . . Manager . . . shall be final and conclusive," A2203 § 3.7(e), any redemption must be measured by those valuations—here, the Series B redemption value of $0—not satisfied by transferring the PHC asset in kind without reference to them.

The pattern is uniform: every in-kind reference confers discretion on the Managing Member, and every member-facing provision reinforces the cash default.

Kuramo thus asks this Court to convert a discretion the agreements gave the Managing Member into an entitlement they withheld from Kuramo. The text forecloses that result.

B. Corporate Separateness Independently Bars Redeeming PHC Out of Feronia KNM

Corporate separateness independently bars the redemption, and Kuramo never answers the point. OB.77-78. Its defense rests exclusively on equitable discretion and the absence of an express contractual prohibition, AB.101-02; it nowhere confronts the obstacle that the asset sits in a separate entity beyond the redeeming entity's reach. NCM is a manager, not a fund—it has no fund assets to surrender and does not own the PHC Shares; Feronia KNM does, as the Chancellor herself held. A861-62.

"[T]here exists a presumption of corporate separateness, even when a parent wholly owns its subsidiary." *Principal Growth Strategies, LLC v. AGH Parent LLC*, 2024 WL 274246, at *16 (Del. Ch. Jan. 25, 2024). Kuramo cannot invoke the NCM Agreement to redeem assets out of Feronia KNM, in which it admits it has no "direct ownership interest." A3010. Doing so would let Kuramo leap-frog intermediate entities (NGFF, KN Agri, and Feronia KNM) with their own creditors and restrictive agreements—the very end-run around corporate form the doctrine exists to foreclose. And equity does not override that separateness to reach assets the law places beyond the redeeming entity, as Section C explains.

C. Equity Follows the Law and Cannot Override the Statutory and Contractual Cash Default

The Chancellor justified overriding these limits on the ground 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," A878, and Kuramo defends the redemption on that rationale. AB.101. But equitable power is bounded by law, not a license to override it: equity "does not create remedies where the parties' behavior is already closely regulated" by statute and contract. *RGC Int'l Invs., LDC v. Greka Energy Corp.*, 2001 WL 312454, at *10 n.45 (Del. Ch. Mar. 7, 2001). That constraint binds with particular force in the alternative-entity context, where "investors in alternative entities must read the entity's constituent documents carefully to understand their rights, and the limitations on their rights." *Holifield*, 304 A.3d at 923. However broad the Chancellor's discretion, it cannot manufacture an in-kind entitlement that § 18-605 and the agreements withhold—least of all for a sophisticated investor that chose not to negotiate for an in-kind right and should not obtain through equity what it declined to secure by contract.

Equity is constrained in a second respect: relief must "proximately result" from the proven misconduct. *Thorpe v. CERBCO, Inc.*, 676 A.2d 436, 444-45 (Del. 1996). What forecloses in-kind redemption is the cash default, not any breach of duty—even a faithful Managing Member could have refused to redeem Kuramo in kind. The remedy thus lacks any causal nexus to the loyalty breach, and its sweep confirms the mismatch: an open-ended transfer of both PHC and GenAfrica—lock, stock, and barrel—exceeds the bounds of that breach.

Kuramo's reliance on *Gotham Partners, L.P. v. Hallwood Realty Partners, L.P.*, 817 A.2d 160 (Del. 2002), is misplaced. There, this Court held only that a partnership agreement's contractual appraisal procedure did not preclude a damages remedy for breach of fiduciary duty, while reaffirming that "the contractual nature of a limited partnership may" constrain equitable remedies. *Id.* at 176. *Gotham Partners* thus did not authorize equity to override a *statutory* default; it held only that equity may award damages where a contract does not expressly preclude them. Here, §§ 18-605 and 18-701 are statutory defaults the Legislature enacted, and the agreements reinforce them. A2841 § 3.14.2; A2980 § 8.7. Ordering in-kind redemption of specific LLC property over the LLC Act's express prohibition is a far cry from the damages remedy *Gotham Partners* approved.

Paige Capital Management, LLC v. Lerner Master Fund, LLC does not help Kuramo. As the Chancellor recognized, it is "uninformative": it ordered a cash distribution and did not address Section 18-605. A888-89. And Kuramo's suggestion that Seruma "already" amended the agreement to permit an in-kind contribution of Mpala, AB.102, conflates two things—a managing member's authority to *accept* an in-kind contribution is not a non-managing member's entitlement to *demand* an in-kind distribution. Nor does Kuramo's purported status as sole non-managing member matter; § 18-605 fixes the cash default by member right, regardless of the number of members.

IX. THE CHANCELLOR ERRED IN ENTERING A BRIDGE LOAN JUDGMENT THAT, COMBINED WITH THE IN-KIND REDEMPTION, PRODUCES AN IMPERMISSIBLE DOUBLE RECOVERY

The in-kind redemption (discussed *supra*) and the Bridge Loan judgment together produce an impermissible double recovery: Kuramo *both* keeps PHC *and* recovers the very loan proceeds that funded its acquisition. OB.54-56. The final judgment awarded Kuramo $9.75 million plus interest while providing that "KN Agri's obligation to pay these damages shall not be affected by the in-kind redemption." A891. The court also erred in dismissing the promissory-estoppel claim on integration grounds, because the convert-to-equity promise was collateral to the integrated loan agreement. OB.54-56. Kuramo responds that (i) its proper funding of the facility supports the judgment and (ii) the integration clause bars the estoppel claim. AB.84-86. Both fail: the double recovery is independent of the funding findings (Section A), and the convert-to-equity promise is collateral to the loan (Section B).

A. Kuramo Cannot Keep PHC and Recover the Acquisition Loan

The Nile Fund Parties do not ask this Court to disturb the Chancellor's finding that the December 30, 2020 $4 million drawdown request "was a mistake," A816—a credibility assessment of live testimony. B1156-57. Accepting that finding costs them nothing: the double recovery turns not on whether Kuramo withheld any tranche of the loan, but only on its retaining both the asset and repayment of the acquisition loan.

Whatever the resolution of the funding dispute, the judgment leaves Kuramo with both halves of the same transaction. The Bridge Loan proceeds financed PHC's acquisition and development; the in-kind redemption ratifies Kuramo's seizure of PHC (Point VIII); and the Bridge Loan judgment compels repayment of those same proceeds with interest. Because the proceeds became the very asset Kuramo now retains, recovering both the asset and the loan awards Kuramo the same value twice.

This windfall is the direct product of the in-kind-redemption error. Had the redemption been satisfied in cash, as the LLC Act's default requires, the contractual waterfall would have netted the outstanding Bridge Loan against the cash distributed to Kuramo. The mechanism is the creditor-priority sequence: KN Agri's net assets are paid first to creditors "in satisfaction of liabilities of the Company," and only then to Members "in the proportion of the value of their respective Capital Accounts." A2212 § 7.2(a)(iii)(A)–(B); A2210 §4.3. Because Kuramo is both the Bridge Loan creditor and the Series B Member, any cash redemption would have accounted for both: paying the Bridge Loan as a creditor claim would reduce the residual pool available for Member distributions, and Kuramo's Member recovery would be calculated from that reduced pool—the net-asset-value measure on which any redemption must be based. Repayment would thus have been absorbed within the cash-redemption calculation rather than recovered as an additional sum on top of the asset. Reversing the in-kind redemption therefore dissolves the double recovery automatically.

B. Kuramo's Promise to Fully Fund and Convert Was a Collateral Undertaking That Promissory Estoppel Protects

The Chancellor rejected promissory estoppel on the ground that the Bridge Loan Agreement is fully integrated. A834; A855. That conflates two different promises. The integrated instrument is the loan, fixing the terms on which a temporary advance would be made and repaid. The promise the Nile Fund Parties relied on is the extrinsic commitment to fully fund the $15 million facility and convert the advance into a 40% non-managing membership interest in KN Agri. A1883; A565/1288. DLA confirmed that term to PHC's lenders—the "$15,000,000 was to have been converted into Kuramo's 40% non-managing membership participation" in KN Agri, A2501—and Kuramo's own Answering Brief reproduces the same arithmetic: "Kuramo's conversion of the Bridge Loan to equity (15/38 = 40%)." AB.48 n.202. That conversion, not repayment, was the consideration producing the contemplated 60/40 split, and it appears nowhere in the loan agreement. *SIGA Techs., Inc. v. PharmAthene, Inc.*, 67 A.3d 330, 348 (Del. 2013), on which the Chancellor relied, bars promissory estoppel only where the integrated contract governs the promise at issue—not where, as here, the promise is collateral to it. *Rostowsky v. Hirsch*, 2024 WL 4491902, at *9–14 (Del. Ch. Oct. 15, 2024).

The equity commitment was no post hoc characterization. Kuramo confirmed it in the Equity Support Letter, A1141-48, executed July 17, 2020 and delivered to the third-party DFI Lenders to induce the debt restructuring, and Pallan acknowledged it in writing: "I am perfectly clear on the documents. We will fund into KN Agri as a loan and convert the loan into equity at the same basis." A1883; A286/519. Kuramo's insistence that it intended only a 99% Series B conversion cannot be squared with the record: the parties' October 27, 2020 writings and the notarized organizational charts Kuramo circulated to PHC's lenders reflect a prospective 40% interest in KN Agri, not a 99% Series B position. A2072; A2137.

Nor does the loan's grant to Kuramo of "sole and absolute discretion" over individual borrowing requests, A1870, defeat the point—a response the Opening Brief's collateral-promise argument encompasses, OB.55-56, and that answers the discretion contention Kuramo advances, AB.83. That discretion governed the mechanics of advancing funds; it did not address, let alone displace, the separate commitment to convert the advance into equity. The promise is thus collateral to, not inconsistent with, the integrated writing: a promise supplying a term the instrument omits is what promissory estoppel protects.

The operative reliance is not the Funds' entry into the May 2020 loan but Seruma's later conduct in reliance on the commitment—the same reliance the Nile Fund Parties pressed below and in the Opening Brief, A4133-34; OB.55-56, here sharpened to meet Kuramo's contention that the supporting documents post-date the loan, AB.82-87. In reliance on the promise to convert, Seruma negotiated a forward-sale contract for PHC's output that would have allowed KN Agri to repay the loan. A4133. The Chancellor's explanation that Pallan impeded that contract as a "bad deal," A834, cannot be squared with his contemporaneous description of the unconverted loan as the "main lever" over KN Agri: Kuramo did not decline a poor transaction but preserved the leverage repayment would have eliminated. A2160; A276-77/480-81. Because Seruma's reliance followed and was induced by the convert-to-equity commitment, the loan's execution timing does not defeat the estoppel.

SUMMARY OF ARGUMENT ON CROSS-APPEAL

1. DENIED. The Court below did not abuse its discretion by rejecting Kuramo's request for attorneys' fees and costs, which the Chancellor correctly determined were not supported by the record.

ARGUMENT ON CROSS-APPEAL

I. KURAMO CANNOT INVOKE DEFERENCE SELECTIVELY WHILE CHALLENGING THE CHANCELLOR'S DISCRETIONARY FEE DECISION

A. Question Presented

Did the Chancellor abuse her discretion in denying Kuramo's request for attorneys' fees and costs?

B. Scope of Review

This Court reviews "a denial of an application for counsel fees and costs for abuse of discretion." *Dover Hist. Soc'y, Inc. v. City of Dover Plan. Comm'n*, 902 A.2d 1084, 1089 (Del. 2006).

C. A Finding of Bad Faith Does Not Compel Fee Shifting

Fee-shifting under the bad-faith exception is discretionary, not mandatory, and Kuramo cites no authority that a breach-of-loyalty finding compels it. *Dover Hist. Soc'y*, 902 A.2d at 1093. The Chancellor's exercise of that discretion should be affirmed.

The exception authorizes fee-shifting where a party has "acted in bad faith, vexatiously, wantonly, or for oppressive reasons," *id.*, but a court who finds bad faith may still conclude that the substantive remedies already awarded fully remediate the wrong—as she did here. *River Valley Ingredients, LLC v. Am. Proteins*, 2026 WL 1182418, at *6 (Del. Super. Ct. Apr. 30, 2026). That the Chancellor called Seruma's conduct "egregious" and "brazen" does not change the analysis, it reinforces it: the same court that made those findings declined to shift fees.

Kuramo's three specific contentions fare no better. The Chancellor anticipated them all: "The court does not shift fees lightly. And the facts and circumstances of this case do not warrant it." A862 n.440.

First, Kuramo points to the finding that Seruma breached his duty of loyalty. But "[t]he mere fact that a [fiduciary] has breached his duty of loyalty . . . does not justify an award of attorneys' fees." *HMG/Courtland Props., Inc. v. Gray*, 749 A.2d 94, 124 (Del. Ch. 1999).

Second, Kuramo points to the Chancellor's description of Seruma as not providing "straight answers." AB.107. But Delaware courts decline to shift fees even where a litigant changes positions, especially on "intricate issues." *inTeam Assocs., LLC v. Heartland Pmt. Sys., LLC*, 2021 WL 5028364, at *18 (Del. Ch. Oct. 29, 2021).

Third, Kuramo points to the entry of judgment against Seruma on his counterclaims. But under the American Rule, the "prevailing party is responsible for the payment of his own counsel fees," *Tandycrafts, Inc. v. Initio P'rs*, 562 A.2d 1162, 1164 (Del. 1989), and a party's lack of success does not, without more, justify fee-shifting.

Kuramo's characterization of the counterclaims as "groundless" is also at odds with the record: they rested on the express terms of the governing agreements and documentary evidence, and an unsuccessful claim is not, without more, a bad-faith one. A862 n.440.

Credited individually or together, Kuramo's contentions fall far short of showing the Chancellor's decision is capricious or arbitrary. *Versata Enters., Inc. v. Selectica, Inc.*, 5 A.3d 586, 608 (Del. 2010). A Chancellor who awarded extensive substantive relief and still declined fees has not abused the discretion this Court reviews most deferentially. *RBC Cap. Mkts., LLC v. Jervis*, 129 A.3d 816, 879 (Del. 2015). The denial of fees should be affirmed.

CONCLUSION

Accordingly, this Court should reverse the judgment on Points I through V; correct the Bridge Loan judgment to eliminate the double recovery on Point IX; reverse the fiduciary-duty ruling on Points VI and VII; and vacate the in-kind redemption on Point VIII. On cross-appeal, the Chancellor's discretionary denial of attorneys' fees and costs should be affirmed.

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