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,	No. 87,2026
v.	Court Below: Court of Chancery of the State of Delaware
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,	C.A. No. 2021-0323-KSJM
Plaintiffs, Counter-Defendants-Below/ Appellees.	
v.	
KURAMO OPPORTUNITY OFFSHORE FUND II GP, LTD,	
Third-Party Defendants-Below/Appellees.	

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

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INTRODUCTION[1]

In their Reply Brief, defendants barely even try to defend against Kuramo's arguments for why fees should be shifted. Instead, defendants offer up a story—an alternate reality in which defendant Larry Seruma is a disinterested fund manager, scrupulously caretaking the interests of his funds and his outside investors. This world of Seruma's is literally unblemished by self-interest—the $100 million personal benefit that Seruma used his fiduciary authority to grant himself not mentioned even once. His is a world of "negotiations," disclosures, and "mutual agreement[s]"—one in which Kuramo attempts a "coup" for no reason at all.

The world of defendants' briefs is a proven fiction. It is the story that Seruma told on the stand at trial, in the face of hundreds of contrary trial exhibits, and that Chancellor McCormick rejected as factually false. Although defendants now pay lip service to the idea of "accepting [the Chancellor's factual] findings for purposes of this appeal," nothing could be further from the truth. Time and again, defendants simply pretend these findings—of no negotiations, of no disclosures, of Seruma "execut[ing] the Challenged Transactions unilaterally and [telling] Kuramo that he had or was taking certain actions, while doing just the opposite"[2]—out of existence.

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[1] Unless otherwise defined herein, all capitalized terms have the meanings ascribed to them in Appellees'/Cross-Appellants' Answering Brief on Appeal and Opening Brief on Cross-Appeal (Trans. ID 79462562) ("KOB").

[2] Opinion-60 (A768).

In reading defendants' final brief, one is left with the ineluctable impression that it was written by an artificial intelligence program trained solely on Seruma's own trial testimony, the purported "testimony" of Seruma's former litigation counsel (who, despite disclaiming any personal knowledge of the relevant events,[3] was Seruma's sole supporting "fact" witness at trial), and the handful of documents on which defendants relied below. And perhaps it was. How else to explain the fictitious case-law quotation;[4] alteration of other quotes to directly reverse the meaning of the purported source materials;[5] attribution confoundments in which defendants' own arguments are portrayed as "holdings" of the trial Court which

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[3] A575/1325:18-1327:08(Lamek); A575/1327:18-22(Lamek); A575-A576/1328:04-1239:20(Lamek); A576/1330:17-1331:04(Lamek); A576:1331:14-19(Lamek); A576/1331:24-1332:09(Lamek); A576-A577/1332:10-1334:09(Lamek).

[4] Defendants purport to quote "*Cont'l Ins. Co. v. Rutledge & Co.*, 750 A.2d 1219, 1229 (Del. Ch. 2000)," for the proposition that, as a matter of law, conduct modifications cannot be effective "absent evidence that the parties effectively waived the *writing requirement itself* by course of conduct." Reply-Br.-4. That quotation—to which defendants "supplied" the "emphasis"—appears nowhere in the cited case, nor in any other Delaware case, state or federal, available on Westlaw.

[5] Defendants argue that "§ 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.'" Reply-Br.-12-13 (emphasis and underlining added). What Section 7.2 actually provides is that the "Company will be sole adviser … relating [to] the management of **public markets investment funds**, to include … equities and fixed income, hedge funds, … or any other investment product or strategy **in the public markets** for which Kuramo has any control, discretion and/or management control" (same). In other words, to manufacture the appearance of Section 7.2 not being limited to "public-markets funds," defendants elided the words, "in the public markets."

defendants now purport to accept as dispositive "concession[s]";[6] solecisms in which Kuramo having responded to defendants' arguments is confused with accepting those arguments as true;[7] and endless misrepresentations of fact—large and small?

On the one hand, it is exceedingly difficult to respond to such a brief—one in which the basic elements of an appeal (the factual record, the trial Court's decisions) are treated as optional building blocks, rather than binding constraints. Yet, in the end, defendants' final brief is a perfect encapsulation of why fees should be shifted in this action, and for two overarching reasons.

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6 Defendants assert that 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. The Nile Fund Parties agree—and that concession defeats Kuramo's position." Reply-Br.-42 (quoting A812). Here is what Chancellor McCormick actually wrote at A812: "In post-trial briefing, **the Nile Parties claimed** that [']The anticipated 60/40 (Nile/Kuramo) ownership split of KN Agri remained aspirational because Kuramo CIV III never fully funded the $15 million Bridge or converted it into equity in KN Agri'" (emphasis added). Having thus summarized defendants' argument, she rejected it on the following page: "There is no evidence that Kuramo agreed to a 60%/40% post-Restructuring Transaction split." A813.

7 In its Opening Brief, Kuramo observed that Seruma has, over the years, claimed two contradictory versions of a supposed "60/40 split": one with a denominator of $18 million and another with a $38 million denominator. Kuramo did so in part by quoting both from Seruma's contemporaneous e-mails (asserting the $18 million version of the "split") and his Opening Brief (which, like his post-trial briefs, claimed the $38 million version). KOB at 47-48 & nn.200-02. Defendants' Reply confuses Kuramo's quotation of defendants' Opening Brief as an acceptance of its contents: "Kuramo's own Answering Brief reproduces the same arithmetic: 'Kuramo's conversion of the Bridge Loan to equity (15/38 = 40%).'" Trans. ID 79910553 at 61 ("Reply-Br."). Yes, Kuramo "reproduce[d]" that quote from defendants' Opening Brief—to show that it was contrary to Seruma's own contemporaneous e-mails and sworn statements. *See*, *e.g.*, B1322, B1252, B2708 ¶ 23 (Seruma contemporaneously swearing to superseded, $18 million version).

First, defendants' brief fails to address in any meaningful way Seruma's bad-faith fiduciary disloyalty—misconduct that left Kuramo no choice but to bring and prosecute this action through to the extraordinary remedy of a Court-ordered redemption in kind that the Court below found was necessary to finally separate Seruma from the assets he had spent years trying to personally misappropriate, and to afford Kuramo substantive relief for its successful lawsuit.

Second, defendants continue, and indeed take to new heights, their years'-long campaign to avoid responsibility for Seruma's actions through misdirection, evasion, and outright misrepresentations.

For the reasons set forth below and in Kuramo's opening appellate brief, the Opinion should be reversed to the limited extent of awarding Kuramo its attorneys' fees and costs incurred in connection with this action.

ARGUMENT

I. SERUMA TRIED TO MISAPPROPRIATE A $100 MILLION ASSET, AND CONTINUES TO LIE ABOUT IT.

A. Seruma's Bad-Faith Fiduciary Misconduct Was "Egregious," "Brazen," and "Unbelievable."

In the summer and fall of 2020, Seruma was tasked with implementing a carefully-structured Transaction involving the Congolese company PHC. At the time, Seruma held only a *de minimis* personal interest in the Nile Funds and, indirectly, in PHC. Kuramo, in contrast, owned over 95% of each of the Nile Funds, and beneficially owned – as between the parties – essentially the entire PHC investment. The Transaction, in which Kuramo, Nile and Mafuta were to go from indirect minority owners of PHC to becoming (through a "NewCo") the company's controlling shareholders, and which was being funded in full by Kuramo, had been structured specifically to maintain these relative interests.[8]

When Seruma was done implementing the Transaction, he purported to own between 60% and 100% of the PHC investment personally—an interest his trial expert assessed to be worth between $72.1 million and $135.5 million.[9]

It is undisputed that Seruma never told Kuramo that he had any personal interest in the Transaction as he was bringing it about—Seruma never even claimed

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8 *See generally* KOB-30-48.

9 *Id.*-42.

to have made such a disclosure.[10] To the contrary, Seruma repeatedly assured Kuramo's principals that Kuramo would remain the PHC investment's beneficial owner,[11] that he was acting in Kuramo's interests,[12] that any money the Nile Funds made on the investment would ultimately go to Kuramo,[13] and that Kuramo remained the overwhelming owners of the Nile Funds.[14] It is equally undisputed that, had Seruma implemented the Transaction as he (undisputedly) told Kuramo he was doing — *i.e.*, through KN Agri Series B — then all of those things would have been true.[15] But Seruma instead structured the Transaction within the Nile Funds such that all or most of the economic benefits flowed to him personally.

It is necessary to write all this once again because defendants literally refuse to acknowledge that any of it happened. In their Reply Brief, as in their opening brief, defendants cannot bring themselves to even once acknowledge that Seruma benefitted in any way from the Transaction that he implemented as an undisputed-

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10 *Id.*-43.
11 *Id.* & n.181.
12 *Id.*-45 & n.190.
13 *Id.*-44-45 & nn.187-88.
14 *Id.*-43-46.
15 Pallan testified that Seruma repeatedly told him that he (Seruma) was implementing the Transaction through Series B. A189-90/245:20-252:11(Pallan). That understanding is manifested in a dozen e-mails and other writings shared contemporaneously with Seruma. KOB-46 & n.193. Seruma never contradicted Pallan's testimony, or even claimed to have told Kuramo that he was implementing the Transaction other than through Series B. *Id.*-39, 46.

until-this-appeal fiduciary of Kuramo—let alone that Seruma purported to make himself the Transaction's principal or even sole beneficiary.

It is difficult to imagine how any transaction in which a fiduciary investment manager winds up personally owning the principal asset he was purportedly managing on his principal's behalf could possibly be entirely fair—particularly where, as here, the transaction is being funded in full by the principal and the fiduciary has not even disclosed that he has any personal interest. If such a thing were possible, though, the fiduciary would have to at least try to make the case. Instead, defendants here do no more than stick their head in the sand—hoping, it seems, that the cloud of irrelevancies they have called up will obscure effectively, with three years and one appellate layer of remove from trial, the hundred-million-dollar self-dealing at the heart of this case. But that is no defense at all.

Kuramo brought this case in April 2021 because its investment manager tried to misappropriate the principal asset he was purportedly managing on its behalf—a fact that Kuramo only learned after Seruma engaged in an almost unbelievable separate act of dishonesty in Kinshasa that February, Seruma having "lied" to Kuramo's principals about what he was doing in the interim.[16] That "egregious," "brazen," and "unbelievable" act of disloyalty (and these are all Chancellor

[16] Letter-Decision-3 (A881).

McCormick's words),[17] standing alone, should be enough to warrant fee shifting here. *Montgomery Cellular Hldg. Co., Inc. v. Dobler*, 880 A.2d 206, 228 (Del. 2005) (fees should be shifted under the "bad faith" exception where, among other things, defendants failed to act with "even minimal responsibility").

Unfortunately, defendants' bad acts go far beyond Seruma's bad-faith attempt to "misappropri[ate]" a $100 million asset.[18] Throughout this case, and especially in their Reply Brief, defendants have engaged in litigation misconduct that falls far outside the bounds of permissible advocacy. That misconduct provides a further reason for fees to be shifted.

B. Defendants Continue to Act Dishonestly.

Throughout this case, defendants have engaged in a variety of dishonest tactics. In the proceedings below, for example, Seruma "refused to provide straight answers or take clear positions" on the extent of the PHC interests he purports to have granted himself in the Transaction.[19] So too did defendants go from claiming a contemporaneous 60/40 "agreement" with Kuramo premised on GenAfrica to an entirely-different, purportedly-contemporaneous 60/40 "agreement," with a different underlying numerator and denominator, based instead on Mpala.[20]

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17 Opinion-56; Opinion-30; Letter-Decision-9.

18 Opinion-29.

19 *Id.*-41-43 & nn.224-32.

20 KOB-47-48 & nn.200-02.

In their Reply Brief, defendants argue that there was nothing wrong with them "changing positions" in this way because these "issues" — how much of PHC did Seruma claim to own? what were the terms of the supposed contemporaneous "agreement" with Kuramo entitling Seruma to his claimed interest? – were "intricate."[21] They were not; defendants were simply making it all up as they went along—a fact Seruma made clear in an e-mail he now refuses to acknowledge.[22]

That was all in front of Chancellor McCormick. On appeal, defendants go even further in purporting to remake the record as they see fit.

1. Defendants Pretend Away Contrary Evidence.

On appeal, not every argument that a party makes will be addressed by the other side. Certainly Kuramo did not respond to each and every point that defendants raised in their opening brief. But there is a world of difference between "fail[ing] to respond directly to an opponent's citation of caselaw,"[23] and pretending that whole swathes of the trial record—on which the Chancellor based her factual findings—do not exist. Defendants have done the latter.

For example, in addition to never acknowledging Seruma's personal interest in the Challenged Transactions, defendants omit any reference to the dozens of e-mails, text messages, and recorded (by Seruma) telephone calls from the summer

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21 Reply-Br.-66.
22 B1322.
23 Reply-Br.-11.

and fall of 2020 in which Seruma "consistently communicated to Kuramo that Kuramo would continue to hold a majority interest in NGFF, KN Agri, and Feronia KNM post-restructuring."[24] In these communications, Seruma, among other things, assured Kuramo's principals that:

- "You own 97 percent of whatever is Nile and whatever—this is what I said to you. Whatever it is in Nile you own a majority of it, 97 percent …. [I]t's really the entire fund because the entire fund is owned by you."[25]

- "Yeah [it's an investment but ultimately you are the hundred percent beneficial owner]."[26]

- "[A]s far as I'm concerned, my interest in this business and Kuramo are completely aligned because it's a financial investment. You know, whatever money I make falls into Kuramo or whatever it is falls into Kuramo."[27]

- "[E]verything goes back to Kuramo. That's what I'm saying. Everything goes back to Kuramo."[28]

- I "act in the best interest of Kuramo."[29]

The trial Court likewise found, among many other things, that:

- "Seruma … repeatedly represented to Kuramo that Feronia KNM would be held in Series B," thereby maintaining Kuramo's proportional interest in the PHC investment.[30]

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24 Opinion-44.
25 *Id.*-45 & nn.239-40 (quoting A1983).
26 *Id.* & n.241 (quoting B1034).
27 *Id.* & n.242 (quoting B1072).
28 *Id.* & n.243 (quoting B1072).
29 *Id.*-46 & n.246 (quoting B1146).
30 *Id.*-37.

- "[T]here is no contemporaneous evidence suggesting that the plan for consolidating the agribusiness investments involved moving Mpala in NGFF from its ring-fenced position in KN Agri."[31]
- "Kuramo did not want Mpala to be part of the mix at all and restructured KN Agri as a Series LLC to protect Kuramo from exposure to Mpala."[32]
- "Seruma executed the Challenged Transactions unilaterally and told Kuramo that he had or was taking certain actions, while doing just the opposite."[33]

This Court will find precisely zero references to any of these found facts—or dozens of others of similar weight—in either of defendants' appellate briefs. That is not "advocacy."[34] That is not "[a]ccepting the Chancellor's factual findings."[35] It is an attempt at defrauding this Court. And it gets worse.

2. Defendants Affirmatively Misrepresent the Facts, the Opinion, and Kuramo's Arguments.

It would be bad enough if defendants attempted to "defend" Seruma's misconduct by pretending it away, but on appeal defendants repeatedly take it a step further: by inventing putative "facts" and "holdings" out of nothing.

For example, defendants' principal defense in this case is that Kuramo and Seruma supposedly agreed on a "60/40 split" – defendants have always been vague about whether that 60 was intended for NGFF, or rather for Seruma personally – that

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31 *Id.*-39.
32 *Id.*-39-40.
33 *Id.*-60.
34 *Cf.* Reply-Br.-11.
35 *Cf. id.*-36.

would govern ownership of the PHC investment following the Transaction. Why Kuramo would have agreed to accept 40% of the PHC investment, which Kuramo owned 99% heading into the Transaction – a Transaction Kuramo was funding in full with $15 million, to $0 from Seruma – defendants have never even tried to explain. Nor is defendants' story compatible with the dozens of e-mails, texts and phone calls referenced above—a matter defendants have, again, "addressed" by refusing to acknowledge them. Nor still have defendants been able to tell a consistent story about this 60/40 agreement,[36] or one that does not rely on "fuzzy" and "interesting math."[37] But it is their story nonetheless.

In their Reply Brief, defendants – incredibly – take the position that Chancellor McCormick "held" that there **was** an agreed-upon 60/40 split, but that the split was merely "'aspirational' because it was contingent on Kuramo's fully funding the Bridge Loan and converting it to equity."[38] Defendants then purport to "agree" with that "holding," which defendants claim "defeats Kuramo's position."[39]

Chancellor McCormick did not, however, find that the parties agreed on a 60/40 split. In fact she found exactly the opposite to be true: "Seruma claims

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36 *See supra*, nn.19-20.
37 Opinion-40-41.
38 Reply-Br.-42.
39 *Id.*

that Kuramo agreed to him moving Mpala and to the 60/40 split, but there is no evidence of that fact. The evidence is directly to the contrary."[40]

Rather than acknowledge the Court's actual holding, defendants cite a separate portion of the Opinion in which the Chancellor quoted defendants' own argument before rejecting it.[41] In other words, defendants purport to locate a dispositive concession in now agreeing with an argument they themselves made and the Court rejected as "directly … contrary" to the evidence. Whether this is the work of artificial intelligence, inadvertence, or intentional fraud, it is far beyond the pale.

Similar, if less extreme, misrepresentations pervade defendants' Reply Brief. For example, defendants purport to "accept" what the "Chancellor [purportedly] sa[id] [about the parties' September 2019 ring-fencing agreement], *i.e.*, [that] it protected Kuramo's ***existing interest in KN Agri*** from being diluted by an in-kind contribution of Ugandan farmland of contested value."[42] But Chancellor McCormick found exactly the opposite to be true: "The evidence reflects that Kuramo did not want Mpala to be part of the mix ***at all*** and restructured KN Agri as a Series LLC to protect Kuramo from exposure to Mpala"—full stop.[43]

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40 Opinion-59.

41 Reply-Br.-42 (citing Opinion-43).

42 *Id.*-39 (emphasis in original).

43 Opinion-39-40 (emphasis added).

In the same vein, defendants purport to cite page 56 of the Opinion for the proposition that "[t]he Asset Sale—the court-supervised purchase of PHC's assets through the Canadian bankruptcy proceeding—is the transaction Kuramo challenged."[44] But, once again, defendants are pointing to language from the Opinion in which the trial Court laid out <u>defendants'</u> arguments before rejecting them—which the Court did one page later: "Seruma's argument unduly limits the scope of Kuramo's challenge…."[45]

Defendants do much the same with the trial record. For example, defendants claim in their Reply Brief that Kuramo "raised no objection" to the 60/40 split "until February 2021."[46] But Seruma only referred to a 60/40 split in a handful of e-mails to Kuramo's principals, <u>and Kuramo repeatedly wrote back that the split was incorrect</u>:

> Hi Larry,
>
> …the beneficial [ownership] of Kuramo Agri into KN Agri is based on the Series B relative to NGFF, so that should be ~95% ownership.

B1141.

> Larry,

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[44] Reply-Br.-37.

[45] Opinion-57.

[46] Reply-Br.-44; *see also id.*-40 (60/40 split supposedly "used without objection for nearly a year").

> …the ownership % of Kuramo Agri into KN Agri would be based on the Series B in which Kuramo Agri would own ~95% or more of KN Agri Series B.

B1145.

Chancellor McCormick specifically found that "Pallan … rejected [the 60/40] allocation of interests multiple times when Seruma attempted to have Pallan approve organizational charts reflecting the break-down."[47] Yet, on appeal, defendants try to mislead this Court into believing precisely the opposite.

Defendants likewise claim that "the parties discussed consolidating PHC and Mpala right from the outset of their relationship, and Seruma contributed Mpala in October 2019 in furtherance of that plan."[48] But that undisputedly did not happen—defendants' (sole) citation to Seruma's false trial testimony notwithstanding. As the Court below found, Seruma contributed Mpala into KN Agri Series C in October 2019 pursuant to the parties' "ring-fenc[ing]" agreement.[49] It is true that Seruma repeatedly broached consolidating Mpala and PHC before then, but Kuramo undisputedly objected—hence the "ring-fencing" agreement.[50]

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47 Opinion-44.

48 Reply-Br.-42-43.

49 Opinion-59.

50 *Id.*-32-37.

Defendants' treatment of the trial record and the Opinion as mere suggestions, rather than binding constraints, is yet another reason why fees should be shifted.

3. Defendants Continue to Change Their Story.

For the five years leading up to this appeal, it was defendants' position that Seruma owed Kuramo fiduciary duties. It was a position that for the first two years of this case defendants resisted taking, but at trial they took it.[51] According to Seruma, his conduct over the summer and fall of 2020 was that of a fiduciary looking out for the interests of his 1% outside investor, the Segal Foundation.[52] That explanation never made any sense, and Chancellor McCormick correctly rejected it factually.[53] But, in the proceedings below, defendants "briefed this [case]," and tried to justify Seruma's conduct, "under common law fiduciary standards…."[54]

On appeal, defendants now try to chart an entirely different course. First, defendants attempt to defend Seruma by claiming for the first time that any "benefit" he allocated to himself—the closest they ever get to acknowledging the $100 million

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[51] KOB-63-64 & n.287. Defendants try to avoid this concession by arguing that a "litigant's characterization" of "contract question[s]" is irrelevant. Reply-Br.-33. First, defendants' counsel also made the concession—not merely Seruma personally—and did so at trial. But, more to the point, the record below was formed, and the Chancellor rendered her rulings, based upon Seruma defending his conduct under default fiduciary standards. Opinion-53-54, 6 n.30. It is too late in the day for defendants to change course on appeal. *See infra*, nn.61-62.

[52] *See* KOB-63-64 & n.287.

[53] *See* Opinion-37 n.211; *id.*-56.

[54] Opinion-53.

elephant in the room—was not "truly 'personal'" because the "assets were transferred to KN Agri, a subsidiary of NGFF."[55] (Seruma claims to own, as relevant to PHC, either 60% or 100% of NGFF, and, in turn, KN Agri.)[56]

Setting that absurd deflection aside, defendants now purport to renounce entirely having ever owed Kuramo fiduciary duties. That is, having tried this case before the Chancellor on the basis of Seruma-as-fiduciary, having affirmatively conceded the point at trial, and indeed having thus avoided Chancellor McCormick reaching Kuramo's fraud claim,[57] defendants would have this Court take the so-developed record and apply to it an entirely different construction—one in which Seruma had unfettered discretion to do literally anything he wanted as manager of the Nile Funds, including misappropriating PHC. Defendants, of course, do not put it so directly, but, make no mistake, that is what they are now arguing: "Section 13.3(c)(i) permits a Covered Person exercising granted discretion,"[58] which defendants assert extends to <u>every decision</u> made by Seruma in "manag[ing] the business" of the Funds,[59] to "consider only its own interests."[60]

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55 Reply-Br.-38.

56 Opinion-41-43 & nn.224-32.

57 Opinion-62 ("Because Kuramo prevailed on its claims for breach of fiduciary duty, the court need not reach the fraud claim.").

58 Reply-Br.-30.

59 *Id.*-31.

60 *Id.*-30. Defendants urge that the "stakes [of this appeal] reach beyond these parties." *Id.*-3. Kuramo agrees. To accept Seruma's argument—that the managers of Delaware alternative entities operating under similar grants of discretion can

Defendants' latest attempt to change their story fails legally. Where, as here, a party has made a legal concession in the Court of Chancery,[61] and the Chancellor has accepted that concession,[62] the party is estopped from retracting the concession on appeal. *Cox Comms., Inc. v. T-Mobile US, Inc.*, 273 A.3d 752, 766-68 (2022) (declining to reach merits of issue as to which the Chancery Court "credited [appellant's] admission"); *see also*, *e.g.*, *Equitable Tr. Co. v. Gallagher*, 77 A.2d 548, 550 (1950) ("[B]ecause Appellant's presentation of the case was not made in the lower Court in a manner fairly calculated to put the Chancellor on notice of the theory now relied upon so strongly, we have no alternative but to affirm…."). But, regardless, the fact that, five years on, defendants continue to change positions is still another reason why fees should be shifted. *Johnson v. Arbitrium (Cayman Islands) Handels AG*, 720 A.2d 542, 545 (1998) (fees should be shifted where defendants repeatedly "changed their sworn testimony at trial or falsified evidence").

simply take for themselves property belonging to the entities—would effect a sea change in Delaware law, to say nothing of the practical consequences.

61 *See* A544/1204:02-08(Seruma).

62 Opinion-6 n.30 (accepting concession "at 1204:2-12 (Seruma)"); *id.*-54.

II. DEFENDANTS' PRINCIPAL COUNTERCLAIMS LACK ANY MERIT, AND DEFENDANTS CONTINUE TO LIE ABOUT THEM.

A. Defendants' Principal Counterclaims Are Groundless.

The history of the parties' PHC investment dates back to 2016, when Kuramo sourced the investment independently of Seruma and Nile. When NGFF joined the investment in late 2017, it was under a formal governance structure in which each of Kuramo, Nile and Mafuta had an equal say in managing it.[63] Over the next three years, Kuramo, Nile and Mafuta jointly managed the PHC investment, including through separate appointments to the Feronia board.[64]

Over those years, the parties met, texted, e-mailed, and spoke over the phone thousands of times about how the PHC investment should be managed.[65] When they sometimes disagreed, it was often, if not always, the view of Kuramo that prevailed—including on matters such as the decision to continue the investment or to walk away from it.[66] At times, Seruma took the lead in managing the PHC investment. At other times, most prominently in the Consortium's frequent negotiations with CDC over the years (including the negotiations leading up to the Support Agreement and the Transaction), Kuramo led the way.[67]

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63 KOB-14-15.
64 *Id.*
65 *Id.*
66 *Id.*-18-19.
67 *Id.*-19, 30-32.

It was against this five years of Kuramo's active participation in managing the PHC investment that Seruma, after his spectacularly ill-considered attempt to make himself DG of PHC led Kuramo to sever ties with him and demand a complete redemption from the Nile Funds, began taking the position that the parties' agreements, which had been in place from the beginning, vested exclusive authority to manage the PHC investment in him personally.

It is, again, necessary to write all of this because defendants refuse to acknowledge that any of it happened. As soon as the dispute arose, Seruma began swearing that Kuramo was no more than a "passive" investor with no historical involvement in managing the PHC investment.[68] At trial, Seruma directly perjured himself on this point, testifying that Kuramo's principals "were never involved in managing PHC prior to the restructuring"[69]—an outright falsehood that defendants attempted to pass off verbatim in their Opening Brief as a purportedly complete description of the PHC investment in the years leading up to 2020.[70]

(It was based on that falsehood, among others, that Kuramo observed in opposition that defendants were attempting to "perpetrate [a] fraud on this Court."[71] On Reply, defendants misquote Kuramo's brief as supposedly taking issue with a

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68 B2708 ¶ 12.

69 A436/891:01-02(Seruma).

70 Br.-24.

71 KOB-89.

different, false-but-less-egregiously-so statement of theirs.[72] Defendants do not attempt to defend their prior falsehood; nor, however, do they retract it.)

The beyond-documented fact that Seruma acquiesced for years in Kuramo's direct involvement in managing the PHC investment has always been fatal to his claim that such involvement constituted a breach of the agreements between the parties, and to the tortious interference and conspiracy claims that he layered on top of that same predicate alleged breach. Yet that did not stop defendants from pressing these and numerous other counterclaims (including several dropped by defendants on appeal) in a transparent attempt to distract away from the ownership misappropriation at the center of this case.

Had defendants simply not asserted these baseless counterclaims, and instead defended Seruma's conduct as an undisputed-until-this-appeal fiduciary on its own terms, then immeasurable time, effort and expense could have been saved. That defendants went ahead with them is a further reason that fees should be shifted. *See Matter of Estate of DeGroat*, 2020 WL 2078992, at **28-29 (Del. Ch. Apr. 30, 2020) (awarding attorneys' fees where defendant asserted counterclaims that were clearly contradicted by the record and refused to "back[] away from [those counterclaims] as the case unfolded").

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72 Reply-Br.-2 (purportedly quoting AB5, 89).

B. Defendants Continue to Act Dishonestly.

It would, again, be one thing if defendants simply took a baseless position and then litigated it honestly. Instead, Seruma repeatedly perjured himself on this subject below, and continues to deal dishonestly with the record on appeal.

For example, in the proceedings below, defendants simultaneously argued that (i) Kuramo's participation in managing the PHC investment constituted a breach of the agreements between Kuramo and Nile, and (ii) Kuramo tortiously interfered with defendants' relationship with the DFI Lenders. On appeal, defendants have dropped the latter claim, but merged its underlying factual premise with their remaining claim, such that they now argue that Kuramo is responsible for <u>excluding</u> Seruma from managing the PHC investment, including because of e-mails that Kuramo sent to the DFI Lenders in the days immediately after the dispute arose.[73]

Setting aside that this new appellate theory was not presented to the Chancellor below, defendants purport to substantiate it through what they describe as a "documented" "sequence" of events beginning on February 9, 2021 (the date of the PHC board meeting in Kinshasa) and ending the following day.[74] According to Seruma, this "sequence," in which Kuramo identified itself to the Lenders as the "99% beneficial owner of Feronia KNM" and 99.9% owner of KN Agri, proves that

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73 Reply-Br.-6-10.

74 *Id.*-8-9.

the DFI Lenders "did not reach an independent judgment about Seruma; instead, they acted based on the knowingly false picture Kuramo painted."[75]

But, in documented fact, the DFI Lenders did not "act[] based on" any picture that had been painted by February 10, 2021. After the dispute arose, the DFI Lenders did not "take sides between Kuramo and Seruma and instead told both parties they would hear them both out."[76] As the Chancellor found, what happened next is this:

> During the first two weeks of March 2021, the DFI Lenders held calls with both Kuramo and Seruma to try to understand each party's point of view and how the transaction could be completed. After the calls, the DFI Lenders asked Seruma a series of questions, including basic questions about NGFF and KN Agri. Seruma provided incomplete responses. That led to the DFI Lenders explaining that Seruma produced "documents showing three completely different current ownership structures in KN Agri. All certified or documented by IQEQ or confirmed by DLA Piper. That's not acceptable." The DFI Lenders explained that, without this information, they would not "be able to declare the restructuring agreements effective."
>
> Among the questions the DFI Lenders needed answers to was: What is Mpala? Seruma responded to the DFI Lenders' questions later that day, but he did not answer them. Rather, he stated that "the complexity is real!" and that he would clear up any confusion on the phone. The DFI Lenders were not satisfied by this response. They said: "This must not be confusing and complex.... Who are you and why are you now the key man and the person who apparently controls every company in the PHC world and take every major decision for PHC?" Seruma reacted

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75 *Id.*-9.
76 Opinion-48.

> with a defensive and hostile tone. And the DFI Lenders ultimately concluded that they could not sign off on the KYC process with Seruma at the helm.[77]

All of this is documented in (extensive) e-mails.[78]

Rather than engage with these e-mails, or the factual findings that the Chancellor rendered based on them, defendants simply pretend it—all of it—away, and accuse Kuramo of "invert[ing] the record" in the process.[79]

This, again, is not "advocacy."[80] It is not offering up a "competing characterization[] of the record."[81] It is fraud. And, again, it gets worse.

Here, by way of illustration only, are another half-dozen misrepresentations of fact from defendants' Reply:

What Defendants Say:	What Actually Happened:	What the Court Found:
"[T]he [supposedly illicit] arrangement [between Kuramo and Mafuta pursuant to which Mafuta was to have a "path to control"] was formed before July 2020 and concealed from Seruma, whom Mafuta removed from an email	Seruma's evidence that the "plan" was concealed from him is that he was dropped from a single e-mail "reiterating" that "plan"? Seruma cannot deny being aware of Mafuta's "path to control," because he specifically signed onto it as a foundational feature	This purported arrangement is so contrary to the evidence that the Chancellor did not even address it.

77 *Id.*-48-49 (citations omitted).

78 *See*, *e.g.*, B1252; B1254; B1255; B1291-92; B1293-94; B1295; B1296-97; B1298; B1301-03; B1304; B1307; B1310-13; B1314; B1318-20; B1321.

79 Reply-Br.-8.

80 *Id.*-11.

81 *Id.*

chain before reiterating the plan."[82]	of the parties' arrangements going back to 2017.[83]	
"Gieskes filed a criminal complaint against Seruma in the DRC—after she herself had nominated Seruma for DG at the February 9 board meeting …."[84]	Ms. Gieskes did not nominate Seruma for DG, at the February 9 board meeting or otherwise.[85]	"Seruma forwarded his name to be the director general, but the board voted against that proposition."[86]
"The parties had previously amended their agreements in writing—the Amended KN Agri LLC Agreement and the Second Amended NGFF LLC Agreement."[87]	Seruma unilaterally amended both agreements—the parties did not.	"[T]he only written amendments in the record, the Amended KN Agri LLC Agreement and the Second Amended NGFF LLC Agreement, were only signed by Seruma."[88]
"[S]everal professionals, applying recognized methods, converged on a consistent value" for Mpala.[89]	No professional acting on Seruma's behalf reached any legitimate valuation of Mpala. Seruma "guided" Barfric's	All of defendants' evidence of Mpala's value traces back to the Barfric valuation.[92]

82 Reply-Br.-28.

83 *See*, *e.g.*, B562 (KKM shareholders' agreement signed by Seruma on behalf of NGFF containing option for Mafuta to acquire an additional 36% of KKM, from its original 15%, bringing Mafuta to a controlling 51% interest). Mafuta pressed for a continued 36% option in 2020—a fact which Kuramo shared specifically with Seruma. B851.

84 Reply-Br.-25.

85 A332/593:02-08(Adeosun).

86 Opinion-28.

87 Reply-Br.-5.

88 Opinion-79.

89 Reply-Br.-45.

92 Opinion-32-34.

	valuation to reach the $20 million figure he made clear at the outset, and again after Barfric preliminarily valued Mpala at half that amount, he wanted to "enter into the accounts."[90] Each of the other professionals Seruma hired took the Barfric figure as a given and merely extrapolated from it.[91]	There was no "converge[nce]."
"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."[93]	Muganwa concluded that Mpala, if indeed Seruma ever owned it, was worth approximately $10 million—though she could not verify even that because Seruma (wrongfully, as the Magistrate below held) did not permit her access to the property.[94]	The Chancellor never reached the issue, finding that the parties' "ring-fencing" agreement—which Seruma "evade[d]"—rendered the value of Mpala irrelevant.[95] It was also for that reason that the Court never reached the question of whether Seruma owned Mpala such that he could have contributed it to KN Agri at any price.[96]
"[T]he notarized organizational charts	There was one, and only one, 60/40 chart	"On July 10, August 19, October 16, November

90 KOB-23 & n.87.

91 *Id.*-80 & n.350.

93 Reply-Br.-45.

94 *See* B2473 at 3-4.

95 Opinion-31, 34.

96 *See id.*-35 n.199.

Kuramo circulated to PHC's lenders reflect a prospective 40% interest in KN Agri, not a 99% Series B position."[97]	presented to the Lenders—a chart Seruma tricked a junior Kuramo employee into signing using exactly the same deceptive tactics that defendants tried using with this Court in their Opening Brief—*i.e.*, identifying only a portion of the chart as relevant (in each case, the opposite portion).[98] In contrast, Seruma sent numerous other organizational charts to the Lenders in the summer and fall of 2020, continuing to identify Kuramo as the 99% owner of KN Agri—including as part of a presentation, on which Seruma collaborated closely with Kuramo's principals, detailing the parties' post-Transaction ownership interests.[99]	10, and December 10, 2020, Seruma circulated an organizational chart stating that Kuramo was a 97.16% owner of KN Agri. On July 10, 2020, Seruma verified the accuracy of the organizational chart."[100] "Around February 2021, Pallan learned that a junior employee at Kuramo had signed an organizational chart sent to him from Seruma stating that Kuramo was the 40% owner of KN Agri, and NGFF was the 60% owner. This was the same organizational chart Pallan had told Seruma was incorrect."[101]

That defendants refuse to deal honestly with both the trial record and the Chancellor's factual findings—to prop up transparently baseless counterclaims, no

97 Reply-Br.-62.

98 KOB-57-58 & n.260.

99 KOB-45 & n.192.

100 Opinion-45 (citations omitted).

101 Opinion-44.

less—is yet another reason why fees should be shifted. *Shawe v. Elting*, 157 A.3d 142, 149 (2017) (fees should be shifted where "a party misled the court, altered testimony, or changed his position on an issue.").

III. DEFENDANTS ARE NOT BEING HONEST ABOUT REDEMPTION.

At trial, Kuramo asked for two principal forms of relief: (i) a declaration affirming Kuramo's direct and indirect ownership of the PHC investment held in the Nile Funds, and (ii) an order finally separating Seruma from PHC through an in-kind redemption of this investment and GenAfrica from the Nile Funds.[102] Although in the Opinion the Chancellor granted the first of these two forms of relief, she held open the question of whether Kuramo should receive the latter.

Over the next seven months, the parties made more than a dozen total submissions dealing with the issue of redemption.[103] Across those submissions, Kuramo repeatedly made two basic points: (i) for a multitude of reasons, including impairments that Seruma's conduct had created for the PHC investment, reputational issues that Seruma's conduct had created for himself, and liquidity constraints that Seruma had likewise created for the Nile Funds, there was no way that a cash liquidation—even one run by a good-faith fiduciary (rather than the adjudicated-to-be-disloyal Seruma)—could possibly return any meaningful value to Kuramo (and certainly far less than a redemption in-kind); and (ii) Seruma persistently refused to commit to even carrying out a cash liquidation process. Indeed, in the briefing

[102] B2489 at 70-72. Kuramo also requested, and obtained, an award of monetary damages for defendants' breach of the Bridge Loan Agreement.

[103] *See e.g.*, A864; B2578; B99; B2584; B286; B319; B2607; B2640; B2667; B2679; B2686; B459; B2700; B516.

below, defendants kept coming up with one reason after another for why Seruma should supposedly never have to redeem Kuramo, in kind or in cash, including by straightforwardly misquoting the language of the Nile Capital operating agreement[104]—in much the same way that defendants straightforwardly misquote this same agreement on appeal.[105]

In the proceedings below, Seruma—who, despite now having been acting openly adversely to Kuramo for over five years (on top of the year he spent undermining Kuramo's interests secretly), continues to owe Kuramo ongoing fiduciary duties—never tried to justify his refusal to redeem Kuramo in-kind through reference to Kuramo's interests. In other words, defendants conceded that a cash liquidation process—to which, again, they refused to even commit—would be much worse for Kuramo (now their 100% outside investor) than a redemption in kind, but held firm on Seruma's supposed discretionary authority to deny Kuramo this relief for no reason other than his own self-interested say-so.[106]

It is, yet again, necessary to write all this because defendants refuse to acknowledge any of it. To read both of their appellate briefs, one would have zero

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[104] B286 at 9-14, 21-25.

[105] *See supra*, n.5.

[106] As Kuramo argued below, Seruma's ongoing fiduciary obligations probably required him to redeem Kuramo in-kind even in the absence of a prior fiduciary breach. *See* B99 at 19-21 (citing *Paige Cap. Mgmt., LLC v. Lerner Master Fund, LLC*, 2011 WL 3505355 (Del. Ch. Aug. 8, 2011)); B286 at 14, 19-20 (same).

conception that, five years after Seruma tried to personally misappropriate the PHC investment in bad faith, he is still opposing any effort to separate the investment from him—including by inventing still further arguments in defendants' appellate Reply Brief for why he should supposedly be left in indefinite control.[107]

This Court should also be aware—defendants having omitted to mention it—that, following the Final Judgment below, Seruma did in fact cause the Nile Funds to redeem Kuramo in kind. Rather than seek a stay of the Judgment pending this appeal, defendants allowed the issue of an in-kind redemption to become moot.

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[107] In the proceedings below, defendants' principal argument rested on a supposed need to protect Segal—just as, at trial, defendants belatedly invoked Segal as the supposed justification for Seruma's fiduciary misconduct. B286 at 2, 16-17. In September 2025, Kuramo acquired all of Segal's interests in the Nile Funds, thereby rending that issue moot. B516. Defendants now drop that argument, and instead argue for the first time on appeal that a redemption in-kind would supposedly violate principles of corporate separateness. Reply-Br.-55.

CONCLUSION

Six years ago, Seruma tried to misappropriate the principal asset he was purportedly managing on Kuramo's behalf. In the process, Seruma "lied" repeatedly to Kuramo's principals about what he was doing.[108]

For the first two years of this case, Seruma "refused to provide straight answers or take clear positions" on matters as fundamental as the extent of his claimed interests,[109] and went from claiming one contemporaneous agreement with Kuramo to, after realizing that the "numbers [didn't] work," claiming an entirely different one.[110] At deposition and trial, Seruma repeatedly gave deceptive[111] and indeed false testimony.[112]

On appeal, defendants continue to lie and prevaricate—repeatedly offering up statements of putative fact that are directly contrary to the trial record and the Chancellor's factual findings, and ignoring whole swaths of the trial record. In their Reply Brief, defendants go farther still, inventing case quotations and supposed holdings of the Chancellor out of whole cloth—again, all in service of an investment manager's claim to own an asset, funded with $36 million from his fiduciary principal Kuramo and $0 of his own money, that he was supposedly managing.

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108 Letter-Decision-3.
109 Opinion-42-43.
110 *See supra*, 19-20.
111 KOB-22.
112 *See*, *e.g.*, *id.*-15, 31 n.119, 48, 89.

Enough is enough. Kuramo has spent six years, and untold energy, time, and expense, undoing the damage that Seruma caused when he chose to go rogue—including by prevailing on all of a dozen claims and counterclaims against an adversary who to this day refuses to acknowledge, much less honestly defend, what he did. Under the extraordinary circumstances of this case, it was error for the Chancellor not to shift fees and costs to Kuramo.

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Dated: July 21, 2026

CERTIFICATE OF SERVICE

I, Bruce E. Jameson, hereby certify on this 21st day of July, 2026, that I caused a copy of the foregoing *Appellees'/Cross-Appellants' Reply Brief on Cross-Appeal* to be served by eFiling via File & ServeXpress upon the following counsel of record:

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