Weinberg v. Waystar, Inc.

2023 | Cited 0 times | Supreme Court of Delaware | March 16, 2023

IN THE SUPREME COURT OF THE STATE OF DELAWARE

TRACEY WEINBERG, § § Plaintiff Below, Appellant, § No. 274, 2022 § v. § § Court Below: Court of Chancery WAYSTAR, INC., DERBY TOPCO § of the State of Delaware INC., DERBY TOPCO PARTNERSHIP § LP and DERBY GP, LLC, § C.A. No. 2021-1023 § Defendants Below, Appellees. §

Submitted: January 18, 2023 Decided: March 16, 2023

Before SEITZ, Chief Justice; VALIHURA, and VAUGHN, Justices.

Upon appeal from the Court of Chancery. AFFIRMED.

Steven P. Wood, Esquire, (argued), Andrew S. Dupre, Esquire, Travis J. Ferguson, Esquire, McCarter & English, LLP, Wilmington, Delaware for Appellant.

Kevin M. Gallagher, Esquire, Caroline M. McDonough, Esquire, Richards, Layton & Finger, P.A., Wilmington, Delaware. Of Counsel: Sarah A. Zielinski, Esquire, (argued), Amy Starinieri Gilbert, Esquire, McGuire Woods LLP, Chicago, Illinois for Appellee.

VALIHURA, Justice: This appeal turns on the meaning of distinct, but related,

option agreements. Specifically, the question is whether two separate events (separated by

must both occur in order for the company to exercise a call right, or

whether the call right may be exercised if only one event has occurred. Plaintiff-below,

Appellant is the former Chief Marketing Officer of

defendant-below, Appellee Waystar, Inc., a D During

her employment at Waystar, the company granted her options to purchase stock in its co-

defendant Derby TopCo, Inc., a Delaware corporation , pursuant to a Derby

Weinberg was awarded three option grants

under the Plan pursuant to three option agreements executed between October 2019 and

By the time Weinberg was terminated on August

16, 2021, 107,318.96 of her options had vested. She timely exercised all of them on

November 12, 2021, and the options immediately converted to economically equivalent

partnership units in co-defendant Derby TopCo Partnership LP, a Delaware limited

Each Option Agreement contains an identical call right provision providing

Appellees (defined below) the right to [t]ermination of

and (y) a

Restrictive Covenant Breach. 1 On approximately November 18, 2021, five days after

1 App. to Opening Br. at A56 (First Option Agreement § 10(a), at 5), A68 (Second Option Agreement § 10(a), at 6), A86 (Third Option Agreement § 10(b), at 6) (emphasis added). A Weinberg exercised her options, Appellees exercised the Call Right and repurchased all of

. Although Weinberg had been terminated within the time

frame specified by the Call Right Provision (defined below), a Restrictive Covenant Breach

had not occurred. The parties dispute whether the Call Right is available in the absence of

a Restrictive Covenant Breach. The Vice Chancellor decided that it was. Weinberg filed

suit against Appellees, and Appellees filed a counterclaim, to resolve whether Appellees

validly exercised the Call Right under the Option Agreements. Weinberg appeals the Court

For the reasons set forth below, we AFFIRM the judgment of the Court of

Chancery.

I. RELEVANT FACTS AND PROCEDURAL BACKGROUND 2

A. The Option Agreements

Weinberg began working for Waystar in July 2018. During her approximately

three-year employment with Waystar, Waystar awarded her three option grants under the

Plan. Each was governed by a distinct Option Agreement: (i) a Substitute Option

Agreement, dat

Agreement, dated August 9,

attached as an exhibit to each Option Agreement. Id. at A54 (First Option Agreement § 2(e)(iv),

at 3), A65 (Second Option Agreement § 2(c)(xi), at 3), A83 (Third Option Agreement § 2(c)(xi), at 3). 2 See Weinberg v. Waystar, Inc. (Chancery Opinion), 2022 WL 2452141 (Del. Ch. July 6, 2022). Agreement granted to Weinberg the option to purchase shares of common stock in Derby

Inc. Once Weinberg exercised the options, the Derby Inc. stock would automatically

convert into Converted Units.

1. The Call Right

Section 10(a) of the First and Second Option Agreement, and Section 10(b) of the

Third Option Agreement provides Appellees with the right to

:

Call Right ent, a member of the Sponsor Group, or one of their respective Affiliates, as determined by Parent in its sole discretion, during the six (6) month period following (x) the (i) the Termination of employment with the Service Recipient for any reason (or, if later, the six (6) month anniversary of the date of the exercise of the [Substitute] Options in respect of which the Option Stock was issued, and (y) a Restrictive Covenant Breach. The Call Right shall expire on the earlier of (i) an Initial Public Offering or (ii) a Change of Control. 3

but it is otherwise identical to the Call Right provision in the Second and Third Option

Agreements. 4

B. Waystar Terminates Weinberg

On August 16, 2021, Waystar terminated Weinberg without cause. On the date of

her termination, 89,318.96 of the options under the First Option Agreement had vested;

3 App. to Opening Br. at A56 (First Option Agreement § 10(a), at 5), A68 (Second Option Agreement § 10(a), at 6), A86 (Third Option Agreement § 10(b), Service Recipient means the principal employer of the award recipient. Id. at A50 (App. A to the Plan). . 4 Id. at A56 (First Option Agreement § 10(a), at 5). 16,000 of the options under the Second Option Agreement had vested; and 2,000 of the

options under the Third Option Agreement had vested. Under each Option Agreement,

Weinberg had 90 days from the date of her termination without cause to exercise the vested

options. On November 12, 2021, within 90 days of her termination, Weinberg elected to

exercise all of her vested options. She purchased 107,318.96 shares of Derby Inc. common

stock, which were immediately converted into Converted Units in Derby LP, for a total

purchase price of $898,756.74.

C. Waystar Exercises its Call Right

On approximately November 18, 2021, Appellees exercised the Call Right and

for a total purchase price of $1,824,422.32.

The parties agree that, as of this date, Weinberg had been terminated without cause and

that a Restrictive Covenant Breach had not occurred.

D. Weinberg Files Suit

Five days after Appellees exercised the Call Right, on November 23, 2021,

Weinberg sued Waystar and its affiliates Derby LP, Derby Inc, and Derby GP, LLC

(collectively, ees . She sought, among other things, a

declaratory judgment that Appellees breached the Option Agreements by exercising the

Call Right, and an injunction enjoining Appellees from asserting the Call Right. The

parties cross-moved for judgment on the pleadings. The Court of Chancery heard oral

argument on April 20, 2022. Following supplemental letter submissions, it issued its

memorandum opinion on July 6, 2022, granting Appellees Pleadings, and entered judgment on July 26, 2022. Weinberg filed a notice of appeal on August 5, 2022. We heard oral argument on

January 18, 2022.

II. CONTENTIONS ON APPEAL

Provision was meant in its several sense. She presents four reasons in support of her

contentions: (1) first absurd result, which the trial court did not do here; 5

(2) second, the Call Right Provision is

mandatory, thus, ; (3), third, the First Option

and did not contain the

provision the Vice Chancellor found would be rendered superfluous the conjunctive and joint sense; and (4) finally, because the Call Right is, at least,

5 Weinberg argues there is a special rule in Delaware requiring us to conclude that construing

Opening Br. at 11 12. However, the cases cited by Weinberg do not support this proposition. Rather, they support the well-established Delaware principle that we interpret the plain language of a contract and enforce its ordinary meaning, as informed by context. See Le Tourneau v. Consol. Fisheries Co., 51 A.2d 862, 865 similar statutes); Lipman v. GPB Cap. Hldgs. LLC, 2020 WL 6778781, at *10 11 (Del. Ch. Nov.

er Stockman v. Heartland Indus. Partners, L.P., 2009 WL 2096213, at *14 (Del. Ch. July 14, 2009) (ve, the opposite approach has been applied where the normal approach would lead to an absurd result or one contrary to the drafter s overall intent) (emphasis added); Concord Steel, Inc. v. Wilmington Steel Processing Co., 2008 WL 902406, at *7 (Del. Ch. April 3, 2008) (identifying three possible approaches for meaning from context, and adopting the third as part of a conjoined list contextually,

determining its meaning based on the elements of the list

Blatt v. Concord Mall, 1982 Del. Super. LEXIS 1049, at *2 4 (Del. ment based on context and syntax); State v. Klosowski statute in the disjunctive sense based on context and statutory intent). ambiguous, and the Option Agreements are contracts of adhesion, the trial court should

have construed the ambiguity against Appellees as the drafters.

III. SCOPE AND STANDARD OF REVIEW

Our standard of review of the grant of a motion for judgment on the to determine whether the court committed legal error in formulating or applying legal

6 Accordingly, we review the grant of a motion for judgment on the pleadings

de novo. 7 The scope of our review is limited to the contents of the pleadings. 8

IV. ANALYSIS

A. Delaware Principles of Contract Interpretation

In addressing the question of how to interpret the word and in the Call Right

Provision, and specifically, whether both events must occur before Appellees can exercise

the Call Right, we apply our well-established principles of contract interpretation. In

construing a contract, our goal is to give effect to the intent of the parties. 9

cts, i.e. 10

We will read the

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6 Desert Equities, Inc. v. Morgan Stanley Leveraged Equity Fund, II, L.P., 624 A.2d 1199, 1204 (Del. 1993) (citing Levinson v. First Delaware Ins. Co., 549 A.2d 296, 298 (Del. 1998) and Rohner v. Niemann, 380 A.2d 549 (Del. 1997)). 7 Id. 8 Id. (citing Sellers v. M.C. Floor Crafters, Inc., 842 F.2d 639, 642 (2nd Cir. 1988)). 9 Salamone v. Gorman, 106 A.3d 354, 368 (Del. 2014). 10 Osborn ex rel. Osborn v. Kemp, 991 A.2d 1153, 1159 (Del. 2010). 11 Manti Hldgs, LLC v. Authentix Acquisition Co., Inc., 261 A.3d 1199, 1208 (Del. 2021). In doing so, we endeavor to give each provision and term effect and not

render any terms

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Moreover, -world contract, courts must read the

13 Where language is

14

15 16

The

parties steadfast disagreement over interpretation will not, alone, render the contract

ambiguous. 17 The determination of ambiguity lies within the sole province of the

court. 18

12 Id. (quoting Osborn ex rel. Osborn, 991 A.2d at 1159). 13 Chicago Bridge & Iron Co. N.V. v. Westinghouse Electric Co. LLC, 166 A.3d 912, 913 14 (Del. 2017). See also Lorillard Tobacco v. Am. Legacy Found., 903 A.2d 728, 740 (Del. 2006) A court must accept and apply the plain meaning of an unambiguous term in the context of the contract language and circumstances, insofar as the parties themselves would have agreed ex ante ANTONIN SCALIA & BRYAN A. GARNER, Reading Law: Interpretation of Legal Texts 69 (2012) (observing that the ordinary- ordinary, everyday meanings); id. at 70 (observing that most

. 14 Manti Hldgs, LLC, 261 A.3d at 1208 (quoting Osborn ex rel. Osborn, 991 A.2d at 1159 60). 15 Id. 16 Id. (citing Osborn ex rel. Osborn, 991 A.2d at 1160). 17 Id. (quoting Osborn ex rel. Osborn, 991 A.2d at 1159 60). 18 Osborn ex rel. Osborn, 991 A.2d at 1160. B. An Overview of Interpreting

Resolution of this dispute lies in the correct interpretation of one of the

most common words in the English language. One should not be fooled by the size and

ubiquity of the word. 19 The use of this seemingly simple word in legal drafting has long

been the cause of extensive litigation and debate. 20 Yet, as illustrated below, the debate

has not firmly established any clear rules for interpreting the word. Nevertheless, two

avenues of interpretation

path have emerged from the, at times, lively debate.

1. Conjunctive or Disjunctive?

First, and may be interpreted conjunctively or disjunctively. Many legal

suggestion , while is disjunctive, and that courts will construe each word accordingly, absent strong reasons

to break from the general rule. 21 When courts depart from the ordinary, conjunctive

19 See, e.g., United States v. Haynes

20 See e.g., BRYAN A. GARNER, 639 (3d ed. 2011) main text of Words and Phrases (2010) . . . the word and takes up 71 pages of digested cases

interpreting it in myriad ways . . . .). 21 See e.g., Silverman v. Silverman s presumed to be conjunctive Williams v. State, 818 A.2d 906, 912 unless it is

Klosowski, 310 A.2d at 657)), superseded by statute, 74 Del. Laws ch. 246, §§ 2, 3 (2004) (codified at 11 Del. C. § 636(a)); Concord Steel, 2008 WL 902406, at *7 conjunctive, joining two or more elements in a list and requiring all of those elements . . . . (footnote omitted); United States v. Pulsifer, 39 F.4th 1018, 1021 see United States v.

Fisk, 70 U.S. 445, 447, 3 Wall. 445, 18 L.Ed. 243 (1865), we typically would not construe a statute meaning , and construe it, instead, it is often because they

acknowledge that sloppy drafting sometimes confuses the two. 22 Accordingly, courts

In these cases, courts discern

the meaning of the word from the context of the provision and the contract as a whole. In

short overcome by context.

2. Joint or Several?

Second, and may be used in the joint or several sense. 23 Like the Court of

to carry that nonliteral meaning unless there were clear indications in the statute that dictate that result.) (citing 1A NORMAN J. SINGER & J.D. SHAMBIE SINGER, Sutherland Statutes and Statutory Construction § 21.14 (7th ed. 2021))), cert. granted, 2023 WL 2227657 (U.S. Feb. 27, 2023); OfficeMax, Inc. v. United States, 428 F. Crooks v. Harrelson, 282 U.S.

55, 58 (1930))), , No. 04-4009, 2006 U.S. App. LEXIS 8294 (6th Cir. Mar. 30, 2006) interchangeable in construing a contract, absent strong

); SCALIA & GARNER, supra note 13 a]nd joins a conjunctive list, or a disjunctive list but with negatives, plurals, and various specific wordings there a 22 GARNER, supra note 20 and in a given context means or, much to the chagrin of some judges our language-dependent legal system, a body or

and MacDonald v. Pan Am. World Airways, Inc., 859 F.2d 742, 746 (9th Cir. 1988) (Kozinski, J., dissenting))); SCALIA & GARNER, supra note 13, at 116 conjunctive/disjunctive canon, and combines items while or creates alternatives. Competent users Contracts § 428; 11 Williston on Contracts § 30:12 (4th ed.). 23 GARNER, supra note 20, at and has a distributive (or several) sense Weinberg claims that the trial court erred in relying on the second A Dictionary of Modern Legal Usage, because Garner expanded, as iterated in the third edition. Reply Br. at 11. However, Garner reiterates his position Chancery, we view this as the dispositive question before us. 24 Some legal scholars

maintain and is usually several 25 The several and denotes A and

26 For

example, when we say: a person will be

punished for committing the two crimes either when both crimes are committed together

(jointly) or separately (severally). However, when we say: separately (severally).

The determination between joint and several is distinct from the determination

between conjunctive and disjunctive. As Judge John Rogers explained in his dissent in

OfficeMax, Inc. v. United States:

In each sentence the word and has the same conjunctive meaning the difference lies in whether the preceding words are distributed over the conjoined elements or not. Whether to interpret the preceding words as distributed over the conjoined elements or not depends on the context of the sentence, and what we externally know about the conjoined elements. 27

in the third edition, the one published in 2011 and cited by this opinion. There, he restates that GARNER, supra note 20, at 639. 24 Chancery Opinion, 2022 WL 2452141, and intended in its several, or its joint, sense? This is the sole issue necessary to resolution of the matter at hand, and the parties have made cross- 25 See, e.g., GARNER, supra note 20, at 639 (quoting SCOTT J. BURNHAM, The Contract Drafting Guidebook 163 (1992)); Mason v. Range Res.-Appalachia LLC, 120 F. Supp. 3d 425, 445 (W.D. Pa. 2015); F. Reed Dickerson, , 46 A.B.A. J. 310, 311 (1960) .

26 GARNER, supra note 20, at 639; Dickerson, supra note 25, at 310. 27 428 F.3d at 600 (Rogers, J., dissenting) (emphasis in original). In our example above, the elements or not. Judge Rogers presents another illustration. He creates a scene of two guests at [t]ermination .

following. If one distributed this preceding phrase across each element, the Call Right

Provision would read, in relevant part:

Call Right their respective Affiliates, as determined by Parent in its sole discretion, during the six (6) month period following (x) the (i) the Termination of

later, the six (6) month anniversary of the date of the exercise of the Options in respect of which the Option Stock was issued, and during the six (6) month period following (y) a Restrictive Covenant Breach.

In both the Call Right Provision as written and the distributive interpretation above, the

, and what we externally know about the

28

3. Illustrating versus

Courts have struggled with both the conjunctive or disjunctive determination and

the joint or several determination, often conflating the two issues. 29 The Vice Chancellor

the host brings a glass of beer mixed with wine. This is becau ,

over both items, Id. 28 Id. 29 As we discuss below, Weinberg seems to conflate the two as well. Most of her arguments focus used an example from Professor Reed Dickerson who explained that a writer intending [a] statute [governing donations] is to be free to have either,

(A)

(B) ay contribute to charitable institutions and educational

(C) 30

Of the three options, Professor Dickerson recommended option (B)

31 Professor Dickerson noted that the the

the implied

32

Perhaps the best illustration of this debate is the federal circuit split that has

developed recently regarding the interpretation of and in a federal criminal statute

not only because her arguments implicate an issue separate from the joint versus several issue, but also because the trial court expressly stated in such a context the two words are reciprocally related in that the implied meaning of one is the same as the expressed meaning of the other. Chancery Opinion, 2022 WL 2452141 at *4 (citing Dickerson, supra note 25, at 313). 30 Id. (quoting Dickerson, supra note 25, at 313). 31 Id. (quoting Dickerson, supra note 25, at 313). 32 Id. (quoting Dickerson, supra note 25, at 313). (known as the First Step Act). 33 Both sides in this case have relied upon at least one of

these federal appellate decisions

Part of the First Step Act, set forth in 18 U.S.C. § 3553(f), and known as the Safety

Valve Provision, empowers a court to grant a criminal defendant relief from a mandatory

minimum sentence. 34 18 U.S.C. § 3553(f) provides a sentencing safety valve to criminal

defendants, allowing courts to disregard the statutory minimum sentence if:

(1) the defendant does not have (A) more than 4 criminal history points, excluding any criminal history points resulting from a 1-point offense, as determined under the sentencing guidelines; (B) a prior 3-point offense, as determined under the sentencing guidelines; and (C) a prior 2-point violent offense, as determined under the sentencing guidelines. 35

The Safety Valve Provision use of before prong (C) prompts the question of

whether a defendant is ineligible for relief if he has any of the three subsections (the

36 or a defendant is ineligible only if he has all three subsections (the

). 37 Put another way, [t]he question presented is whether as the

33 See First Step Act of 2018, Pub. L. No. 115 391, 132 Stat. 5194, 5221 (codified as amended in scattered sections of 18, 21, and 34 U.S.C.). 34 18 U.S.C. § 3553(f). 35 18 U.S.C. § 3553(f)(1) (emphasis added). Additional criteria to qualify for safety valve relief are laid out in § 3553(f)(2) (5). For simplicity, this decision refers to

36 y for relief, the criminal defendant cannot have (A), cannot have (B), and cannot have (C). 37 Criminal defendants could have (A), or (B), or (C), and qualify for relief, so long as they did not have (A), (B), and (C). government argues . . . this provision requires the defendant to show that he has none

of the criminal history described in subsections (A) (C); or whether instead as [the

defendant] argues the defendant must show only that he lacks the criminal history

described in any one of [the] subsections. 38

At least seven federal circuit courts of appeal Valve Provision in the last two years. Three have concluded is several, or

distributive, meaning that a criminal defendant must not have any of (A), or (B), or (C), to

obtain relief under the statute. One reached the same conclusion about the meaning of the

statute but reasoned that three found the opposite: that, so

long as a criminal defendant did not have all three, (A), (B), and (C), the defendant was

eligible for relief under the statute.

a. The Ninth Circuit

The Ninth Circuit was the first to confront the issue, in United States v. Lopez, a

case cited by Weinberg. That court asked whether conjunctive or disjunctive. 39

After it held

] and is unambiguously conjunctive. 40 Put another

38 Haynes, 55 F.4th at 1078 (emphasis in original). 39 998 F.3d 431, 435 (9th Cir. 2021), , 58 F.4th 1108 (9th Cir. 2023). In his statement regarding denial of rehearing en banc, Judge Nelson called for the United States , and he noted th Lopez, 58 F.4th at 1108. 40 Lopez, 998 F.3d at 433. way, [it held] that and 41 The Lopez court began its analysis by

and with which the court

agreed. 42 Although it acknowledged that where context requires, a court may give

call for a disjunctive reading. 43

uously conjunctive,

[the Safety Valve

Provision] bars him or her from safety- 44

b. The Eighth Circuit

Over a year later, the Eighth Circuit decided United States v. Pulsifer, 45 a case relied

upon by Appellees here. [t]he most natural reading of and

is conjunctive and that it 41

Id. 42 Id. at 436. 43 Id. at 438 (observing Moreover, the court held

Id. at 437.

44 Id.; id. at 444 Section and unambiguous language legislative drafting manual,

of consistent usage result in only one plausible reading of and here conjunctive. interpretation would render (A) surplusage, because someone with (B) a prior three-point offense

and (C) a prior two-point violent offense will always have (A) more than four criminal history points. Id. at 440. Id. at 441.

45 39 F.4th 1018 (8th Cir. 2022), cert. granted, 2023 WL 2227657 (U.S. Feb. 27, 2023). 46 But it framed the issue differently, using the

distributive/several framework:

disjunctively, but we do not believe that is the important question. . . . The

important question here

distributive (or several) sense as well as a joint sense. 47

The court then concluded that the Safety Valve Provision was distributive (or several). 48

condition 49

The

distributive 50 namely,

that were read jointly. 51 In other words,

ny of (A), (B), or (C).

46 Id. at 1021. 47 Id. (quoting GARNER, supra note 20, at 639). 48 Id. interpretation reveal the meaning of the provision Id. at

1023. 49 Id. at 1022. 50 Id. at 1021. 51 Id. Specifically, the court said: There is a strong textual basis to prefer a distributive reading of and in § 3553(f). who has a prior three-point offense under subjection (B) and a prior two-point

violent offense under subjection (C) would always meet the criterion in subsection (A), because he would always have more than four criminal history points. Thus,

operation. This is the argument that the Ninth Circuit rejected in Lopez. Although the defendant did not have a two-point violent offense, he had a four-point

offense and a three-point offense, and, thus, he was not eligible. 52

c. The Seventh Circuit

Then, two months after Pulsifer, the Seventh Circuit threw its hat in the ring in

United States v. Pace. 53 The Pace

other parts of § 3553(f), the context of the supports the view that it should be read disjunctively 54

The court reasoned that a

55

[t]he use of the em-dash following subsection one . . . to connect

the subsections demonstrates that the lead- each subsection

requirement. 56 Finally, the circuit court concluded that a conjunctive interpretation would

[] 57 And the rule of lenity did not apply because the statute was

not ambiguous.

52 Id. at 1022 23. 53 United States v. Pace, 48 F.4th 741 (7th Cir.), , 2022 WL 17254332 (7th Cir. 2022), petition for cert. docketed, No. 22-828 (U.S. Mar. 1, 2023). 54 Id. at 754 (emphasis added). 55 Id. subsections;

56 Id. The Seventh Circuit Circuit in Pulsifer. Id. - important textual basis for - Id.

57 Id. at 755. The Seventh Circuit is the only federal appellate court to ultimately conclude that

to be eligible for relief, a criminal defendant must demonstrate that he does not have any

of the criminal history criteria described in the Safety Valve Provision, because the

meaning of and is disjunctive. This reasoning drew a concurring opinion from Judge

several, and

distributive. 58

d. The Fifth Circuit

Writing two months after Pace, the Fifth Circuit next weighed in. In United States

v. Palomares, it stated: -

59

Like the Eighth Circuit, it acknowledged that although [the Safety Valve Provision] uses to join the three

60 58

Id. at 756 59 (Kirsch, J., concurring). It also prompted a dissent. 59 52 F.4th 640, 642 (5th Cir. 2022), petition for cert. docketed, No. 22-6391 (U.S. Dec. 23, 2022). read as an eligibility Id. at 647. It used the following analogy: Suppose a person was about to enter a baseball stadium and saw a sign that read: To enter the stadium, you must not have (a) a weapon; (b) any food; and (c) any drink. over) each item. Thus, no baseball fan would insist that she could enter the stadium with a weapon

just because she did not have food or a drink. Id. at 644. 60 Id. at 643 (citing SCALIA & GARNER, supra note 13, at 116 25). distributive (or several) sense as well as a joint sense. 61

[the Safety Valve Provision], we must

62

n [the Safety Valve Provision] 63

It concluded that . . .

is the preferred interpretation because it avoids violating the canon against surplusage, 64

he alternative readings are implausible because they each fail to account for

65 Accordingly, the defendant could not

have any of the criminal history described in subsections (A) (C) to qualify for relief.

e. The Sixth Circuit

The Sixth Circuit then addressed the issue in United States v. Haynes, and it agreed

with the Eighth and Fifth Circuits. 66

was conjunctive, in accordance with its ordinary meaning, and several, as confirmed by the

statutory context. The Haynes court primarily relied on two reasons to support its reading

61 Id. (citing GARNER, supra note 20, at 639). 62 Id. 63 Id. at 647. The court focused, in part, on the

structure of (f)(1), particularly on the presence of a negative preceding an em-dash followed by a conjunctive list, as supporting the distributive See supra note 59. 64 Id. at 644. 65 Id. at 647. 66 55 F.4th 1075. and distributive or joint is used in § 3553(f)(1)(B), Id. at 1078. of the Safety Valv conditions, (A) (C extraordinary relief afforded by the safety valve. 67

surplusage. 68 The Sixth Circuit he defendant,

Haynes, was ineligible for safety valve relief because he had a prior conviction for which

he was assigned three points under the Sentencing Guidelines.

f. The Fourth Circuit

Most recently, the Fourth Circuit Court of Appeals voiced its opinion on the matter

in United States v. Jones. 69 It concluded the [g] argument is nothing more

70 It

71

67

Id. at 1079. hich would allow relief -point violent offense. Similarly, it would allow relief for a defendant with 25 criminal history points generated in part by six convictions for assault with a deadly weapon and six convictions for domestic assault (both of which can be two-point violent offenses), but who, by fortuity, lacked a prior three-point offense. Id. at 1080. 68 Id. at 1080. retation, a defendant with a prior 2-point violent offense and a prior 3-point offense by definition would have more than 4 criminal history Id. 69 2023 WL 2125134 (4th Cir. Feb. 21, 2023). 70 Id. at *2. 71 Id. 72

It found this ordinary meaning was buttressed by the

canon of consistent usage.

g. The Eleventh Circuit

The Eleventh Circuit presents a microcosm of the debate all by itself. Writing a few

weeks before Haynes, an en banc panel of the Eleventh Circuit reached the opposite

conclusion as the Fifth, Sixth, Seventh, and Eighth Circuits, in United States v. Garcon. 73

In doing so, it reversed a unanimous three-judge panel, which had itself vacated the

judgment of the district court. 74 The district court

Provision was conjunctive such that Garcon, the criminal defendant, needed to have all

three prongs before he is ineligible for relief. The three-judge panel of the Eleventh Circuit

vacated and reversed the district court, holding that, although and is presumed to have

its ordinary, conjunctive meaning unless the context dictates otherwise,

here, was disjunctive. 75 would be superfluous.

However, the Eleventh Circuit en banc panel agreed with the district court and

interprete accordance with its ordinary conjunctive meaning, a meaning which

72 Id. 73 54 F.4th 1274 (Garcon III) (11th Cir. 2022) (en banc), petition for cert. docketed, No. 22-851 (U.S. Mar. 8. 2023). 74 United States v. Garcon (Garcon II), 997 F.3d 1301 (11th Cir. 2021), en banc, Garcon III, 54 F.4th 1274. 75 Id. at 1305 06. it held 76 Relying in part on

the ordinary-meaning canon of construction, the court found that the statutory context

. 77 And, importantly, the en banc panel found that the

ordinary meaning of 78 In doing so, the court expressly

rejected the advocated for by the

government-appellee and accepted by the Fifth, Sixth, and Eighth Circuits. 79 Reframing

the issue, it stated:

concedes elsewhere in its briefs that this reading is mistaken. Neither the government nor our dissenting colleagues offer any authority that adopts this

concern the same statutory provision. . . . The government is asking us to 80

Accordingly, the en banc surplusage, an absurd result, and be

contrary to legislative intent. Four judges dissented, three of whom wrote separately, and

two judges concurred. 81

76 Garcon III, 54 F.4th at 1278 (citing SCALIA & GARNER, supra note 13, at 119). 77 Id. Util. Air Regul. Grp. v , 573 U.S. 302, 319 (2014))). elsewhere in the statute, Id. at 1278 79.

78 Id. at 1281 83. 79 Id. at 1280. 80 Id. 81 Concurring , Id. at 1285 86 (Rosenbaum, J., concurring). He would In explaining their courts also divided on the canon of surplusage, with a majority (four) of the federal circuit

(A) surplusage, and the remaining (three) circuit courts reaching the opposite conclusion.

there is room for disagreement even among

appellate panels when and even where the context remains

constant.

C.

We acknowledge that the Safety Valve s different from the text before us and, thus, the ultimate resolution by the United States

Supreme Court, which has granted certiorari, will not bear on this case. 82 However, the

foregoing discussion of the federal range of

possible interpretations our federal appellate sister courts have endorsed in construing

Notably, the conjunctive/several interpretation is not, as Appellants vehemently

suggest, a mere aberrational academic construct invented by a law professor that is

unsupported by case law. These opinions also illustrate that the language in the statute can

be unambiguous, notwithstanding a plethora of conflicting views among panels of judges

have applied the rule of lenity to settle the ambiguity. Id. at 1286. The dissenters argued that the majority adhered too rigidly to the ordinary-meaning and consistent usage cannons at the expense construed that, if it can be prevented, no clause, sentence, or word shall be superfluous, void, or

insignificant. Id. at 1300 (Branch, J., dissenting). 82 The United States Supreme Court has granted certiorari in United States v. Pulsifer. See United State v. Pulsifer, 2023 WL 2227657 (U.S. Feb. 27, 2023). and even among the circuit courts of appeal. As this Court recently reaffirmed,

83

In this case, the Court of Chancery Agreements was unambiguous for two reasons. First

and because 84

Rather, the Court of Chancery

adopted Professor

depends in part on whether it is used in a permissive or mandatory sentence.

Because the Call Right Provision gave Appellees the broad right to repurchase

exe sole discretion, the Court of

Chancery found the Call Right Provision to be 83

Manti Holdings, LLC, 261 A.3d at 1208; see also Cox Comm., Inc. v. T-Mobile US, Inc., 273 A.3d 752, 760 (Del. 2022) (citing City Investing Co.

Liquidating Trust v. Cont'l Cas. Co., 624 A.2d 1191, 1198 (Del. 1993))). However, as the dissent in Cox - provision, wh more than one

reasonable interpretation exists, i.e., the provision is ambiguous. Id. at 771 72 (Valihura, J., concurring in part, dissenting in part) (collecting cases). The author of this opinion humbly acknowledges that her view in Cox (that the contract at issue was ambiguous, as evidenced in part, by the conflicting views among the Justices and Vice Chancellor), did not carry the day. 84 Chancery Opinion, 2022 WL 2452141 at *4; accord id. permissive and several; it describes a pair of p . Call Right Provision was several, in accordance with its ordinary meaning. 85 The trial

context the two words are reciprocally related in that the implied meaning of one is the

same as the expressed meaning of the other. 86

Second, the Court of Chancery found that Appellees interpretation of the Call Right

is the only interpretation that gives effect to all terms in the Second and Third Option

Agreements. another provision, which determines the price which Appellees will pay to repurchase

Accordingly, the Court of Chancery held that

the Call Right Provision is exercisable upon satisfaction of one of the conditions, and that

both a termination for any reason and a Restrictive Covenant Breach are not required.

Because Waystar exercised its Call Right on November 21, within six months of the date

Weinberg was terminated, the exercise was timely and valid.

D. The Plain Language and Context

Weinberg challenges versus mandatory principle, and she argues, in the alternative, that the Call Right Provision

is mandatory, not permissive. Although, like the Vice Chancellor, we view the provision

85 Id. at *4; see also GARNER, supra note 20, at 639; Mason, 120 F. Supp.3d at 445 Maurice B. Kirk, Or, 2 Tex. Tech. L. Rev. 235,

243 (1971)); Dickerson, supra note 25, at 312. 86 Chancery Opinion, 2022 WL 2452141 at *4 (citing Dickerson, supra note 25, at 313). as permissive, 87 we conclude that in the Call Right Provision is several and distributive is a sufficient and

compelling reason to . That is, the Court of

provisions of the Option Agreements. 88 The plain language of each of the Option

Agreements, read as a whole, and taking account of the overall context,

termination, with or without a Restrictive Covenant Breach.

1. the six (6) month anniversary of the date of the exercise of the

First, the Call Right Provision not only specifies under which conditions the Call

Right may be exercised, but it also specifies its temporal limits. It provides that the Call

Right is exercisable during the six-month period following

87 App.

to Opening Br. at A56 (First Option Agreement § 10(a), at 5), A68 (Second Option Agreement § Sponsor Group, or one of their respective A

the provision is permissive. Opening Br. at 26. We disagree. The Call Right is a permissive right which Waystar has sole discretion to exercise upon the triggering of the right. We note that even Weinberg has [] determine, in its sole discretion, whether or Id. at 26 27.

88 Sunline Commercial Carriers, Inc. v. CITGO Petroleum Corp., 206 A.3d 836, 846 (Del. 2019) Osborn ex rel. Osborn, 991

A.2d at 1159 60)); Manti Hldgs, LLC, 261 A.3d at 1208. (or, if later, the six (6) month anniversary of the date of the exercise of the Options

in respect of which the Option Stock was

relates to Section 3 of each Option Agreement, which allows an award

recipient 90 days after the date of their termination without cause, or their resignation, to

exercise their vested and exercisable options.

But Section 3 of the Second and Third Option Agreements further provides that,

and exercisable O Options shall immediately terminate and expire

(without payment of any consideration therefor). 89 In both agreements, a

90 This means that the date of

can never be after the date

of a Restrictive Covenant Breach. U the Call Right if a Restrictive Covenant Breach has occurred,

in the Second and Third Option Agreements of meaning or application. 91

89 App. to Opening Br. at A66 67 (Second Option Agreement § 3(b)(iv), at 4 5), A84 (Third Option Agreement § 3(b)(iv), at 4). 90 Id. at A64 (Second Option Agreement § 2(c)(iv), at 2), A82 (Third Option

Agreement § 2 (c)(iii), at 2). 91 - i.e., the termination date and the Restrictive Covenant Breach date. Reply Br. at 21. However, the Firs It states in the Call Right Provision itself that the Call Right is exercisable during the six-month period following the the six (6) month anniversary of the date of the exercise of ial Public Offering or (ii) a

Id. Another example is Section 9 of the First Option Agreement which -termination 2. The Two-Tiered Repurchase Price Provision

Second, we agree with the Court of Chancery Call

Right would render another provision in the Second and Third Option Agreements, a two-

92

Although all three Option Agreements have identical Call Right Provisions, the Second

Option Agreement and the Third Option Agreement contain the Repurchase Price

Provision, which the First Option Agreement lacks. 93

The Repurchase Price Provision, in Paragraph 10(b) of the Second Option

Agreement and Paragraph 10(c) of the Third Option Agreement, provides:

In the event the Call Right is exercised, the purchase price for the Converted Units subject to the exercised Call Right shall be the Fair Market Value (as defined in the Partnership Agreement) per unit on the closing date of the repurchase; provided that in the case of a Forfeiture Event, the purchase price for the Converted Units subject to the exercised Call Right shall be the lesser of (x) the per unit price paid by the Participant for the Converted Units, as adjusted to reflect any dividends or distributions paid in respect of such units and (y) the Fair Market Value (as defined in the Partnership Agreement) per

exercise period . . . until the earlier o Id. (First Option Agreement § 9, at 5). 92 Chancery Opinion, 2022 provision is bolstered by a separate provision in the Second and Third Option Agreements that

pro

93 The First Option Agreement includes a repurchase price provision, in Paragraph 10(b), that is

Call Right shall be the Fair Market Value (as defined in the Partnership Agreement) per unit on § 10(b), at 5 not defined. unit on the closing date of the repurchase. 94

In other words, the Second and Third Option Agreements set two different prices at which

:

Forfeiture Event Cause (or voluntary resignation by the Participant at a time when the Board reasonably determines that the Employer could have terminated the Participant s employment for Cause) or (B) the date of a Restrictive Covenant Breach. 95

Accordingly, if we were to read the Call Right Provision as Weinberg does, the first tier of

the Repurchase Price Provision would be rendered meaningless and would never apply.

This is because if both termination for any reason and a Restrictive Covenant Breach were

required to trigger the Call Right, the repurchase of Converted Units would always be

subject to the price reserved for Forfeiture Events.

The inclusion of the two tiered Repurchase Price Provision demonstrates that the

drafters contemplated (and Weinberg reasonably should have understood) that the Call

Right could be triggered absent a Forfeiture Event, i.e., absent a Restrictive Covenant

Breach. Otherwise, there would have been no need to provide a purchase price for that

scenario. 96

94 Id. at A68 (Second Option Agreement § 10(b), at 6), A86 (Third Option Agreement § 10(c), at 6). 95 Id. at A64 (Second Option Agreement § 2(c)(iv), at 2), A82 (Third Option Agreement § 2(c)(iii), at 2). 96 Restatement (Second) of Contracts § 203 negotiated with care and in detail and has been expertly drafted for the particular transaction, an On appeal, Weinberg points out that the First Option Agreement, which governs

approximately 83% of the options), does not

have the same Repurchase Price Provision. Instead, the First Option Agreement has a

repurchase price provision with only one tier:

Market Value (as defined in the Partnership Agreement) 97 per unit on the closing date of

98 It does not differentiate between a price when the Call Right is triggered

by a Forfeiture Event or absent a Forfeiture Event. She argues that it was error for the

Court of Chancery not to analyze each Option Agreement independently, as separate, and

independent contracts. Further, she contends that if the presence of the Repurchase Price

Provision in the Second and Third Option Agreements requires us to affirm the Court of

the absence of the Repurchase Price Provision in the First Option

Agreement compels us to reverse its ruling as to those options.

ll three Option Agreements are

between the same parties, Appellees and Weinberg, and concern the same subject matter

the granting of options to purchase shares of Derby Inc. under the Plan. All three Option

Cf. Charney v. Am. Apparel, Inc., 2015 WL 5313769 The canon against surplusage, moreover, is most properly used to fathom the objective intent of the contracting parties, not to trap a careless draftsperson into including a contract right that he did not mean to include. And [the canon] does not change the fact that courts will not bend contract language to read meaning into the words that the parties obviously did not intend.) (quoting Majkowski v. Am. Imaging Mgmt. Servs., LLC, 913 A.2d 572, 588 (Del. Ch. 2006))). 97 All three Option Agreements define Fair Market Value by referring to the definition in the Derby LP Partnership Agreement. 98 App. to Opening Br. at A56 (First Option Agreement § 10(b), at 5). Agreements were executed within the same year, with the First Option Agreement and the

Second Option Agreement executed within 24 hours of each other. The Call Right

Provision is identical in all three Option Agreements and should be interpreted consistently.

It would be illogical to conclude that the identical Call Right Provision in the First Option

Agreement, signed the day before the Second Option Agreement, by the same parties, has

a different and contradictory meaning than the one in the Second and Third Option

Agreements. If the parties had intended for the Call Right Provisions to have different

meanings, and conditions, it is reasonable to conclude that they would have changed the

language in the Call Right Provision itself.

E. Only Reasonable Reading

Further, although Weinberg sets forth arguments as to why (in

the conjunctive, joint sense) and why we should not rely on an article written 60 years ago

by a law professor, she does not set forth any arguments as to wh interpreted jointly, rather than severally. This is problematic because, for one, interpreting

As discussed above, the joint versus several determination is

distinct from the conjunctive versus disjunctive determination. Moreover, there is another

i.e., versus disjunctive

determination. We would need to ask (as in the charitable/educational institution example above) inclusively (A or B, or both) or exclusively (A or B,

not both). 99 As that example illustrated, More importantly,

only reasonable reading of the Call Right Provision for the

additional reasons set forth below which consider, more broadly, the context of the

provision.

1.

First, as a baseline, although some scholars maintain that and is

usually several, 100 it is, at least, commonplace. This is especially true in permissive

sentences 101 and aligns with our understanding of common, ordinary usage. For example,

if the You may have a yogurt, a

litigants would understand that they may take any of the food

items, all of the food items, or none of the food items. In the same situation, albeit with a

more demanding host, if the litigants were told, You must take a yogurt, a muffin, and a

99 See e.g., GARNER, supra note 20, at 639 or has an inclusive sense as Varga v. Colvin, 794 F.3d 809, 815 (7th Cir. 2015); Dickerson, supra note 25, at 310 inclusive or both) or the exclusive 100 GARNER, supra note 20, at 639; Mason, 120 F. Supp. 3d at 445. 101 Chancery Opinion, 2022 WL 2452141 at *4 (citing Dickerson, supra note 25, at 312); Mason, n (citing Kirk, supra note 85, at 243)). Y

question would be raised whether the litigants could take all three food items, or they were

limited to one. In other words, a question would exist exclusive. As our example illustrates,

102

2.

Second, the nature of a Call Right and the plain language of the Call Right Provision

in each Option Agreement suggest that a reasonable third party would expect that

Appellees retained a . The phrasing

than being mandatory and obligating Appellees, is a statement subjecting sole discretion exercise. 103

3. The Joint Illogical Result

Third, joint interpretation of the Call Right Provision would

prevent Waystar from exercising its Call Right despite an for-cause

termination, other than one based upon a Restrictive Covenant Breach. For-cause

102 Speaking of breakfast examples, in his dissent in MacDonald v. Pan Am World Airways, Inc., or eggs to be 859 F.2d at 746. 103 Moreover, this interpretation aligns with the disclosure in the Partnership Agreement, (to which the First Option Agreement references and makes the Converted Units subject) App. to Opening Br. at A127 (Partnership

Agreement § 6.2(d), at 23). termination is defined in the Plan as including, for example, willful failure to substantially

perform her duties and responsibilities, substantial negligence in the performance of her duties and responsibilities, and conviction of a felony. 104 Her reading is not logical. It is highly unlikely a company would structure its right to repurchase its equity in such a restrictive manner depriving itself of the ability to repurchase equity from one who has willfully failed to perform, who has been substantially negligent, or who perhaps even has committed a felony, while inexplicably ordaining a Restrictive Covenant Breach with outsized importance by requiring a Restricted Covenant Breach to have occurred before the Call Right can be exercised. 105

104 Id. at A47 (App. A to the Plan, 105 -cause termination, not specifically Restrictive Covenant Breaches. For example, the Plan provides for different exercise schedules when an employee is terminated for-cause and when they are terminated without cause. Section 6(c)(iii) of the Plan provides: Unless otherwise provided by the Committee, whether in an Award Agreement or

for Cause, all outstanding Options granted to such Participant shall immediately each outstanding unvested Option granted to such Participant shall immediately

terminate and expire, and each outstanding vested Option shall remain exercisable for one (1) year thereafter (but in no event beyond the expiration of the Option Period); and (C) unvested Option granted to such Participant shall immediately terminate and expire, and each outstanding vested Option shall remain exercisable for ninety (90) days thereafter (but in no event beyond the expiration of the Option Period). Id. at A37.

rules regarding the fate of unvested options upon termination, further discouraging actions giving rise to for-cause termination. If terminated for cause, - termination date. See id. at A66 (Second Option Agreement § 3(a), at 4), A84 (Third Option

Agreement § 3(a), at 4. The Several

Fourth, the meaning of the Call Right Provision that best aligns with the scheme of

the Plan is the conjunctive, several interpretation. 106 Thus, we disagree with Weinberg

contention that her interpretation of the Call Right entirely consistent with ordinary

executive compensation arrangements and serves a fulsome, rational contract purpose: to

incentivize Appellant to abide by her Restrictive Covenant obligations, on pain of

107

As Weinberg acknowledges, a typical and logical purpose of an equity incentive

plan is to align employee incentives with those of the company. 108 Accordingly, call

rights presumably because options granted under that agreement were subject to an entirely different

vesting schedule, with 98.95% of the options vesting on the date of the grant. 106 GMG Capital Invs., LLC v. Athenian Venture Partners I, L.P., 36 A.3d 776, 779 (Del. 2012) The meaning inferred from a particular provision cannot control the meaning of the entire agreement if such an inference conflicts with the agreement s overall scheme or plan. (citing E.I. du Pont de Nemours and Co., Inc. v. Shell Oil Co., 498 A.2d 1108, 1113 (Del. 1985))). 107 Opening Br. at 19. She further contends that the Second and Third Option Agreements created Id. at 20. 108 Even Weinberg observes in her Opening Brief options are used as an incentive and retention tool for a company that anticipates substantial growth and for the individuals whose Id. (citing Stock Option: Overview, Practical Law Practice Note Overview w-008-0930); accord Beard v. Elster, 160 A.2d 731, 735 consideration passing to the corporation, which could take variable forms, such as the retention of services o Lou R. Kling & Eileen T. Nugent, Negotiated Acquisitions of Companies, Subsidiaries and Divisions, 2 Law J. Press § 22.07[2] (2016) (observing that in an acquisition, existing options and stock grants of a target company may be rolled- important 109 An employee is generally no longer important

to a venture when they cease to be an employee, for any reason. 110 Weinberg argues that

it is a reasonable aspect of the scheme of the Plan for her to hold company equity

indefinitely as a mechanism to ensure loyalty to the restrictive covenants (which she is

in the Restrictive Covenant Agreements expire after specified time periods. 111 Absent

being repurchased by Appellees, Weinberg could hold the Converted Units indefinitely.

Further, the Plan documents state that the purpose of the Plan is to attract and retain

Company Group and

stockholders 112

109 See COMMERCIAL CONTRACTS: STRATEGIES FOR DRAFTING AND NEGOTIATING § 19.03[G] (Vladimir R. Rossman & Morton Moskin eds., 2d ed. 2022). 110 See Stephenson v. Drever, 947 P.2d 1301, 1304 (Cal. 1997) -sell agreement by the other stockholders upon the occurrence of a certain event; the most common of the events

that can trigger the repurch Gallagher v.

Lambert, 74 N.Y.2d 562, 567 Mandatory stock buy-back provisions with an employee shareholder] are designed to ensure that ownership of all of the stock, especially of a close corporation, stays within the control of the remaining corporate owners-employees; that is, ting Kessler, Share Repurchases Under Modern Corporation Laws, 28 Fordham L. Rev. 637, 648 (1959 1960))); Exercising Options to Repurchase Employee-Held Stock: A Question of Good Faith, 68 Yale L.J. rimarily to induce a valuable employee to remain with the company issuing the shares in question, an exercise of the option is almost (internal footnotes omitted). 111 See, e.g., App. to Opening Br. at A291 (Restrictive Covenant Agreement § 4(a), at 2) (12-month restricted period), A311 (Restrictive Covenant Agreement § 5(c)(v), at 5) (18-month restricted period). 112 Id. at A34 (the Plan at § 1) (emphasis added). The purpose provision reads in its entirety: options were to vest upon two schedules: one based on her time at the company 113 and

one based on whether the company achieved certain performance goals. 114 This structure

indicates that the Option Agreements were meant to induce Weinberg both to continue her

, as well as to benefit her own

financial position. 115 Thus, we reject of the Call Right as a

sanction. We observe that Weinberg netted approximately $925,665 when Waystar

repurchased her Converted Units.

F. The Option Agreements are Unambiguous: The Doctrine of Contra Proferentum Does Not Apply

Finally, Weinberg argues that the Call Right Provision is, at least, ambiguous.

Accordingly, she asserts that we must apply the doctrine of contra proferentum because

Purpose. The purpose of [the Plan] is to provide a means through which the Company and other members of the Company Group may attract and retain key personnel and to provide a means whereby directors, officers, employees, consultants, and advisors of the Company and other members of the Company Group can acquire and maintain an equity interest in the Company, or be paid

incentive compensation measured by reference to the value of Common Stock, thereby strengthening their commitment to the welfare of the Company Group and

113 - Agreements provide that 50% of the options are designated as Time-Vesting Options and that 20%

of the Time-Vesting agreement was executed. Id. at A63 (Second Option Agreement §§ 1, 2(a), at 1), A81 (Third

Option Agreement §§ 1, 2(a), at 1). 114 The Second and Third Option Agreements provide when these options, -Vesting will vest based on various performance hurdles, as measured on specified measurement dates. Id. at A63 64 (Second Option Agreement § 2(b), at 1 2), A81 82 (Third Option Agreement § 2(b), at 1 2). 115 The First Option Agreeme a merger transaction. 98.95% of the options granted under the First Option Agreement vested on

the day of the grant, with the remaining subject to adjustment in connection with a final merger price. Id. at A53 (First Option Agreement § 2, at 2). the Option Agreements, and the Partnership Agreement, are contracts of adhesion.

However, for the reasons discussed above, we hold that the Call Right Provision is

unambiguous and accordingly, contra proferentum does not apply. 116

V. CONCLUSION

For the foregoing reasons, we AFFIRM the judgment of the Court of Chancery.

116 Daniel v. Hawkins, 2023 WL 115854, at *29 n.182 (Del. Jan. 6, 2023) (holding the trial court did not err in applying the rule of the last antecedent and other grammatical cannons where contract provision was ambiguous) (citing Stream TV Networks, Inc. v. SeeCubic, Inc., 279 A.3d 323, 341, 341 n.99 (collecting cases standing for the proposition that if a contractual provision is unambiguous, the court need not interpret it and the language of the provision itself controls)).