IN THE SUPREME COURT OF THE STATE OF DELAWARE

CAMBIUM LTD.,	§	
	§	No. 363, 2011
Plaintiff Below,	§	
Appellant,	§	Court Below – Court of Chancery
	§	of the State of Delaware
v.	§	C.A. No. 5857
TRILANTIC CAPITAL PARTNERS	§	
III L.P. (f/k/a/ Lehman Brothers	§	
Merchant Banking Fund III, L.P.),	§	
and LB TCP ASSOCIATES III L.P.	§	
(f/k/a Lehman Brothers Merchant	§	
Banking Associates III L.P.),	§	
	§	
Defendants Below,	§	
Appellees.	§	

Submitted: January 18, 2012
Decided: January 20, 2012

Before **HOLLAND**, **JACOBS** and **RIDGELY**, Justices.

ORDER

This 20th day of January 2012, it appears to the Court that:

1) This is an appeal from a final judgment of the Court of Chancery dismissing the plaintiff-appellant's, Cambium Ltd. ("Cambuim"), amended complaint. Cambium was a consultant for Lehman Brothers Merchant Banking ("LBMB") prior to Lehman Brothers' bankruptcy. The defendants-appellees are formerly known as LBMB Fund III ("Fund"), currently known as Trilantic Capital Partners III L.P., a Delaware limited

partnership, and its general partner LB TCP Associates III L.P., another Delaware limited partnership (collectively "Trilantic").

2) On January 18, 2011, Cambium filed its first amended and supplemental verified complaint alleging a breach of contract, unjust enrichment, and tortuous interference. Trilantic moved to dismiss the amended complaint on February 22, 2011.

3) On June 21, 2011, the Court of Chancery held oral argument on the motion to dismiss. The presiding Vice Chancellor ruled from the bench immediately following oral argument that Trilantic's motion to dismiss was granted with prejudice.

4) In Delaware, a complaint cannot be dismissed "unless the plaintiff would not be entitled to recover under any reasonably conceivable set of circumstances."[1] In the federal court system, the United States Supreme Court recently adopted a new standard of "plausibility."[2] In *Central Mortgage*, this Court reaffirmed that, notwithstanding the holdings

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[1] *Cent. Mortg. Co. v. Morgan Stanley Mortg. Capital Holdings LLC*, 27 A.3d 531, 535 (Del. 2011).

[2] *See Ashcroft v. Iqbal*, 129 S. Ct. 1937, 1949 (2009) ("To survive a motion to dismiss, a complaint must contain sufficient factual matter, accepted as true, to state a claim to relief that is plausible on its face." (internal quotation marks omitted); *see also Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 556 (2007).

in *Iqbal* and *Twombly*, "the governing pleading standard in Delaware to survive a motion to dismiss is reasonable 'conceivability.'"[3]

5) The Delaware standard is a "minimal" one.[4] In *Central Mortgage*, comparing Delaware's "conceivability" standard to the federal "plausibility" standard, this Court explained that the former "is more akin to possibility while the federal plausibility standard falls somewhere beyond mere possibility but short of probability."[5] Moreover, unlike the conceivability standard, the plausibility pleading standard "invites judges to determin[e] whether a complaint states a plausible claim for relief and draw on . . . judicial experience and common sense."[6]

6) The Court of Chancery dismissed the amended complaint prior to this Court's ruling in *Central Mortgage*, which reaffirmed that Delaware continues to apply the "reasonable conceivability" standard. In *Central Mortgage*, this Court noted that "[s]ince the Supreme Court decided *Twombly* in 2007, various members of the Court of Chancery have cited the *Twombly-Iqbal* 'plausibility' standard with approval when adjudicating motions to dismiss."[7] Because the decision on appeal is a bench ruling, the

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[3] *Cent. Mortg. Co. v. Morgan StanleyMortg. Capital Holdings LLC*, 27 A.3d at 537.
[4] *Id*. at 536.
[5] *Id.* at 537 n.13 (internal quotation marks omitted).
[6] *Id*. at 537 (quoting *Ashcroft v. Iqbal*, 129 S.Ct. at 1950) (internal question marks omitted).
[7] *Id*. & n.14.

Court of Chancery did not expressly state which standard of review it was applying. However, the record of the bench ruling reflects that the Vice Chancellor applied the federal standard because he used the term "plausibility" nine times in dismissing Cambium's claims.

7) The Court of Chancery erred by applying the federal "plausibility" standard in dismissing the amended complaint. In *Central Mortgage*, this Court stated: "[W]e emphasize that, until this Court decides otherwise or a change is duly effected through the Civil Rules process, the governing pleading standard in Delaware to survive a motion to dismiss is reasonable 'conceivability.'"[8]

NOW, THEREFORE, IT IS HEREBY ORDERED that the judgment of the Court of Chancery is reversed. This matter is remanded to the Court of Chancery for further proceedings in accordance with this order. Jurisdiction is not retained.

BY THE COURT:

/s/ Randy J. Holland
Justice

[8] *Id*. at 537.