IN THE COURT OF CHANCERY OF THE STATE OF DELAWARE

METEORA CAPITAL PARTNERS, LP, METEORA SELECT TRADING OPPORTUNITIES MASTER, LP, and METEORA STRATEGIC CAPITAL LLC,	)	
Plaintiffs,	)	
v.	)	C.A. No. 2025-0421-JTL
ROADZEN INC.,	)	
Defendant.	)	

OPINION GRANTING SUMMARY JUDGMENT

Date Submitted: May 20, 2026
Date Decided: August 27, 2026

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LASTER, V.C.

To facilitate a merger, the constituent companies entered into a side deal with an asset manager. After the merger closed, the asset manager exercised its rights under the agreements governing the side deal. The surviving company failed to comply.

The asset manager filed this action against the surviving company for breach of contract. The asset manager moved for partial summary judgment establishing that its reading of the agreements is correct and seeking a decree of specific performance enforcing the surviving company's obligation to remove transfer restrictions from shares that the asset manager holds.

This decision grants the asset manager's motion for summary judgment. The plain language of the agreement supports the asset manager's reading. The agreement contains the rights that that asset manager seeks to enforce. The surviving company must remove the transfer restrictions.

I. FACTUAL BACKGROUND

The facts are drawn from the parties' submissions on the motion for summary judgment.[1] At this procedural stage, the court must view the evidence in the light most favorable to the non-movant.[2]

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[1] Citations in the form "Compl. Ex. ___ at ___" refer to exhibits filed with the complaint. Dkt. 1. Citations in the form "PX ___ at ___" refer to exhibits attached to the affidavits the plaintiffs filed with their opening brief and reply brief. Dkts 4, 32. Citations in the form "DX ___ at ___" refer to exhibits attached to the affidavits the defendant filed with its answering brief. Dkt. 30.

[2] *Merrill v. Crothall-Am., Inc.*, 606 A.2d 96, 99 (Del. 1992) (citation omitted); *Brown v. Ocean Drilling & Expl. Co.*, 403 A.2d 1114, 1115 (Del. 1979).

A. The Company, The SPAC, And The Merger

Roadzen Inc. (the "Company") is a British Virgin Islands company focused on using artificial intelligence to transform the global auto insurance market. Before the events giving rise to this litigation, the Company was privately held.

Vahanna Tech Edge Acquisition I Corp. (the "SPAC") was a special purpose acquisition company. In November 2021, the SPAC issued approximately 20 million shares in its initial public offering. After the IPO and a private placement of warrants, the SPAC's trust account held $197.5 million in cash. In addition, the SPAC had approximately $935,000 on its balance sheet for total cash of $198.5 million.[3]

In February 2023, the SPAC and the Company entered into a merger agreement that contemplated a standard de-SPAC transaction (the "Merger Agreement").[4] The Company would merge with a SPAC subsidiary, the Company's common stock would be converted into shares of the SPAC's common stock, and the SPAC would change its name to Roadzen (the "Merger"). Through the Merger, the Company would access the public markets and receive a slug of cash from the SPAC.

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[3] *See* PX 4 at F-4. Technically, the trust account contained around $204 million in cash, but that amount included deferred commissions of $6,525,000 owed to the SPAC's underwriters that would become payable if the SPAC completed a business combination. Those amounts were paid out once the de-SPAC transaction closed. For consistency, this decision deducts the deferred underwriter commissions when referring to amounts in the trust. For the parties, however, deferring the commissions was important, because the SPAC listed its shares on the Nasdaq Global Market. It requires net tangible assets of at least $200.1 million, and the higher figure of $204 million enabled the SPAC to clear that hurdle.

[4] The Company and the SPAC amended the Merger Agreement as of June 29, 2023. The amendments are not relevant to this case.

The Merger Agreement required that the SPAC have at least $50 million available at closing, *after* giving effect to any redemptions (the "Minimum Cash Condition").[5] After the Merger was announced, the SPAC's public investors submitted redemption requests for 15,670,446 Class A shares. With the redemption price set at $10.76 per share, the aggregate redemptions would require paying out $168.6 million. The SPAC's cash would drop from $198.5 million to just $29.9 million, causing the Minimum Cash Condition to fail.

B. The Meteora Transaction

The SPAC and the Company could have waived the Minimum Cash Condition. Instead, they turned to Meteora.[6] Founded by Vikas Mittal in 2021, Meteora specializes in event-driven investments with an emphasis on SPAC-related instruments.

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[5] There were other financial requirements in play, but the Minimum Cash Condition was the principal constraint on the parties' ability to close. The SPAC's pre-Merger articles of incorporation, for example, required that the SPAC have net tangible assets of at least $5,000,001 to close a business combination, but that requirement was never in jeopardy. The SPAC also chose to list on the Nasdaq Global Market, rather than the Nasdaq Capital Market where most SPACs list. To maintain its listing after the de-SPAC in November 2021, the post-Merger entity had to requalify for listing under IM-5101-2, which meant it had to satisfy Global Market Rule 54101(b). The clear path was Rule 5101(b)(3), which required a bid price of at least $4, a market value of listed securities of at least $75 million, and a market value of unrestricted publicly held shares of $20 million. Those requirements were not seriously at risk either.

[6] Meteora participated in the transaction through three entities: Meteora Capital Partners, LP, Meteora Select Trading Opportunities Master, LP, and Meteora Strategic Capital LLC. The differences between the entities are not important for this decision, which refers to them collectively as "Meteora."

The transaction with Meteora combined two components (together, the "Meteora Transaction"). The first and more complex component was an OTC Equity Prepaid Forward Transaction (the "Forward"). That element was governed by an agreement dated August 25, 2023 (the "Forward Agreement"),[7] which incorporated by reference the ISDA 2002 Master Agreement (the "Master Agreement").[8] The second and simpler component involved Meteora committing to purchase newly issued shares from the post-Merger entity (the "Subscription"). That element was governed by a subscription agreement, also dated August 25, 2023 (the "Subscription Agreement").[9] The Forward Agreement and the Subscription Agreement (jointly, the "Transaction Agreements") were executed together, referenced each other, and comprised the unitary Meteora Transaction.

[7] DX B (cited as "FA"). The Forward Agreement is styled as a confirmation of a swap and defines itself as the "Confirmation," as if it were the confirmation of a trade. It technically is, but it is also a lengthy and densely written contract. The term "Confirmation" is sufficiently inapt that this decision eschews it. Styling the Forward Agreement as a trade confirmation also results in the agreement looking like a multiple-page term sheet without the section numbers and paragraph designations used to navigate complex agreements. That makes it hard to cite. This decision uses the format "FA at [X], [Y]" where X is the page number and Y is the term-sheet-style label that appears opposite the operative language.

[8] *See* PX 7 (cited as "MA").

[9] DX C (cited as "SA"). The Subscription Agreement, happily, has the look and feel of a typical contract.

1. The Acquired Shares

Through the Meteora Transaction, Meteora committed to acquire 5 million shares (the "Acquired Shares").[10] Meteora would obtain those shares in two ways. Meteora would acquire some shares that had been submitted for redemption by purchasing them from their third-party owners (the "Recycled Shares"). Meteora would acquire other shares directly from the Company (the "Subscribed Shares").

First, under the Forward Agreement, Meteora committed to buy at least 3.5 million Recycled Shares. Without that commitment, the SPAC would have to redeem those shares at $10.76 per share for total proceeds of $168.6 million, leaving the SPAC a cash balance of $29.9 million and causing the Minimum Cash Condition to fail.[11] Assuming Meteora bought 3.5 million Recycled Shares, the SPAC would only have to satisfy redemption requests totaling $130,940,000. The SPAC would therefore be left with cash at closing of $67,560,000,[12] sufficient to allow the Merger to close.

Second, under the Subscription Agreement, Meteora committed to acquire enough Subscribed Shares directly from the SPAC to own a combined 5 million

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[10] The Forward Agreement does not use this term, which this decision uses for convenience. The Forward Agreement instead uses the term "Maximum Number of Shares." FA at 3, Maximum Number of Shares. In theory, Meteora would buy fewer shares if the purchase would result in Meteora owning greater than 9.9% of the SPAC's common stock. *Id.* That was not a realistic possibility, but perhaps it was pertinent for other Meteora deals.

[11] $198.5 million in available cash minus $168.6 million in anticipated redemptions = $29.9 million in cash at closing.

[12] $198,500,000 in available cash minus $130,940,000 in anticipated redemptions = $67,560,000 in cash at closing.

shares. Assuming Meteora purchased 3.5 million Recycled Shares, Meteora would acquire 1.5 million Subscribed Shares.[13] Meteora agreed to pay $10 per share for the Subscribed Shares, so if Meteora bought 1.5 million Subscribed Shares, then Meteora would owe the SPAC $15 million. It might seem that the $15 million would add to the SPAC's cash on hand at closing for the purpose of satisfying the Minimum Cash Condition, but as discussed in the next section, Meteora never actually transferred any funds to the SPAC for the Subscribed Shares.

Through these two mechanisms, Meteora would end up owning 5 million Acquired Shares. If Meteora purchased more Recycled Shares, then it would purchase fewer Subscribed Shares. The Forward Agreement initially defined the term "Number of Shares" as the sum of the Recycled Shares and the Subscribed Shares, then used that defined term (subject to adjustments) in later calculations.

2. The Prepayment

At first glance, the Meteora Transaction seemed to enable the Company to emerge from the Merger with more cash. After all, Meteora's purchase of Recycled Shares negated the redemption of those shares and the outflow of cash that would have caused. Meanwhile, the Subscription Agreement implied that Meteora would pay the Company $10 for each Subscribed Share. But any near-term cash benefit to the Company was a mirage.

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[13] SA at 1.

Under the Forward Agreement, the SPAC committed on behalf of the post-Merger entity to wire Meteora a cash payment immediately after closing (the "Prepayment"). The Prepayment was based on the Prepayment Amount, defined as the full amount Meteora paid for the Subscribed Shares plus 99.5% of the redemption price multiplied by the number of Recycled Shares.[14] The Forward Agreement called the 0.5% deduction the "Prepayment Shortfall."[15]

By definition, the Prepayment wiped out 99.5% of any cash benefit the Company otherwise received. Assuming 3.5 million Recycled Shares and 1.5 million Subscribed Shares, the Prepayment Amount would be $52,471,700.[16]

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[14] The Forward Agreement defines the Prepayment Amount as follows: "A cash amount equal to the (a) the sum of (i) the number of Recycled Shares *multiplied by* the Initial Price *plus* (ii) the number of Subscribed Shares *multiplied by* the Per Share Price (as defined in the [Subscription Agreement]) *less* (b) the Prepayment Shortfall." FA at 4, Prepayment Amount. The Initial Price was the redemption price of $10.76 per share.

[15] The Forward Agreement defines the Prepayment Shortfall as "[a]n amount in USD equal to one-half percent (0.50%) of the product of (i) the Recycled Shares multiplied by (ii) the Initial Price, paid by Seller to Counterparty on the Prepayment Date (which amount shall be netted from the Prepayment Amount)." *Id.*, Prepayment Shortfall.

[16] The calculations are as follows:

Value of Recycled Shares component = 3.5 million Recycled Shares * $10.76 = $37,660,000.

Value of Subscribed Shares component = 1.5 million Subscribed Shares * 10.00 = $15,000.000.

Prepayment Shortfall = 0.5% * $37,660,000 = $188,300.

Meteora would not receive that much in cash. The Forward Agreement called for netting out the amount Meteora committed to pay for the Subscribed Shares against the Prepayment, so Meteora never had to pay any cash to the Company for the Subscribed Shares. That deduction would reduce the Prepayment to $37,471,700.[17]

And that was not all. The Forward Agreement also called for the Company reimburse Meteora for legal fees of up to $50,000 and expenses of up to $0.07 per Recycled Share.[18] With 3.5 million Recycled Shares, the maximum per-share payment would be $245,000. Adding those amounts to the Prepayment, Meteora would receive $37,766,700.[19]

Using the figures assumed so far, the Meteora Transaction would enable the SPAC to reach closing with $67,560,000 million in cash. After wiring $37,766,700 to

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Recycled Shares component + Subscribed Shares component – Prepayment Shortfall = $37,660,000 + $15,000,000 = $52,660,000 – $188,300 = $52,471,700.

[17] Assuming again that Meteora purchased 1.5 million Subscribed Shares at $10 per share, the calculation would be: Prepayment Amount – Calculated value of Subscribed Shares or $52,471,700 - $15,000,000 = $37,471,700.

[18] *Id.* at 5, Reimbursement of Legal Fees and Other Expenses (entitling Meteora to "an amount equal to (a) the reasonable and documented attorney fees and other reasonable out-of-pocket expenses related thereto actually incurred by Seller or its affiliates in connection with this Transaction, not to exceed $50,000 in the aggregate and (b) expenses actually incurred in connection with the acquisition of the Recycled Shares (other than Recycled Shares held by Seller as of the date hereof) in an amount not to exceed $0.07 per such Recycled Share.").

[19] $37,471,700 + $50,000 + $245,000 = $37,766,700.

Meteora immediately after closing, the Company would be left with net cash from the SPAC of $29,793,300.

Ironically, the net amount of $29,793,300 in cash from the SPAC would be less than the Minimum Cash Condition. It also would be less than the Company would have received from the SPAC if the parties had simply waived the Minimum Cash Condition. Without the Meteora Transaction, the Company would have emerged from closing with $29,900,000 in cash. The $106,700 delta reflects the difference between the legal fees and expense reimbursements of $50,000 and $245,000, respectively, and the Prepayment Shortfall of $188,300.

If the Meteora Transaction had ended at this point, then the SPAC's actions could be analogized to an aspiring borrower applying for a bank loan who had to meet a net worth requirement but who could not satisfy it because of a debt imminently coming due. To solve the problem, the aspiring borrower enlists a friend who agrees to pay the debt, but on the condition that the borrower repay the friend as soon as the bank funds the loan. If the borrower did not explain to the bank what was going on, the borrower would be committing bank fraud. If the borrower explained to the bank what was going on, the bank would not do the deal.

Translated to the Merger, the SPAC is the borrower and Meteora is the friend. The Company is the bank, because it could veto the Meteora Transaction by refusing to proceed. For purposes of the Merger, all three knew everything that was planned. Not only that, but they disclosed the details to the SPAC's and the Company's stockholders. Yet everyone went through with the deal. Such is the magic of markets.

3. The Settlement Amount

Up to this point, the description of the Meteora Transaction has only covered what would happen before and immediately after closing. So far, Meteora has made out quite well. Immediately after closing, it would own 5 million shares and would have received a payment of $37,766,700.

The Meteora Transaction did not stop there. After closing, the deal got better for Meteora.

The principal commitment Meteora made in the Forward Agreement was to pay the Company an amount in cash defined as the "Settlement Amount."[20] Meteora would make the payment based on a future "Valuation Date," scheduled by default to occur 18 months after the Merger closed.[21] The Forward Agreement gave Meteora the right to accelerate the Valuation Date, either after specified acceleration events or unilaterally in its "sole discretion."[22]

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[20] *See id.* at 5, Settlement Amount.

[21] *See id.* at 2, Valuation Date. The cash payment is not actually due on the Valuation Date. Instead, the Valuation Date kicks off a "Valuation Period," defined as the time required for 10% of the total volume traded—excluding any volumes traded during opening and closing auctions—to equal the Number of Shares less any Subscribed Shares that were not yet freely tradeable plus something called the "Estimated Maturity Shares." *Id.* at 5–6, Valuation Period. The Forward Agreement never defines "Estimated Maturity Shares," and it appears nowhere else in the contract, suggesting a mistaken carryover from another deal. Payment only becomes due on the Cash Settlement Payment Date, defined as the tenth local business day after the end of the Valuation Period. *Id.* at 6, Cash Settlement Payment Date. For simplicity, this decision ignores that complication.

[22] *See id.* at 2, Valuation Date.

From the Company's standpoint, the prospect of receiving the Settlement Amount held out the possibility that the Company would get more cash on the Valuation Date than it paid to Meteora in the Prepayment. In that happy scenario, the Company could come out ahead. In reality, the Forward Agreement stacked the deck in favor of Meteora, giving the Company only one narrow and highly improbable path to upside.

The Forward Agreement defines the Settlement Amount as a cash payment equal to a calculated price based on the Valuation Date (the "Settlement Price")[23] multiplied by the difference between the "Number of Shares" and the "Unregistered Shares."[24] The Settlement Price generally would be "the volume weighted daily VWAP Price over the Valuation Period."[25] The Forward defines "VWAP Price" as "[f]or any scheduled trading day, the volume weighted average price per share as reported on the relevant Bloomberg Screen."[26] If Meteora exercises its right to accelerate the Valuation Date unilaterally, without any acceleration event, the Settlement Price would be the closing price on the trading day before the Valuation Date.[27]

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[23] *See id.* at 5, Settlement Amount. The Forward Agreement does not contain an analogous term, but having one is convenient.

[24] *See id.*

[25] *Id.*

[26] *Id.* at 2, VWAP Price.

[27] *See id.* at 5, Settlement Amount. The definition of Cash Settlement Payment Date technically does not accommodate this scenario. *See id.* at 6, Cash Settlement

The VWAP Price formula inferably favors Meteora over a single-day pricing mechanic. By using a valuation window, Meteora has the ability to affect the price through market activities during the window, such as by selling shares. The VWAP Price formula also excludes opening and closing auctions, where institutions are active and much of the daily trading takes place. As defined, the VWAP Price formula enables Meteora to affect the weighted average to a greater degree by selling during quieter mid-trading-day periods.

The Number of Shares starts out as 5 million, reflecting all of the Acquired Shares. Meteora could reduce the Number of Shares through the Early Termination Option outlined below. The parties bargained for the Company to register all of Meteora's shares, so the number of Unregistered Shares was expected to be zero.

How might the Company come out ahead? Under the assumptions used to date, the Company would wire $37,766,700 to Meteora immediately after closing. The Company wired that amount based on Meteora owning 5 million shares, so the payment represented value of $7.49 per share.[28] If the Number of Shares never fell,

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Payment Date. It seems likely that the Forward Agreement intends for payment to be due on the tenth local business day after the Valuation Date in this setting too.

[28] Recall that the Prepayment includes legal fees and expenses and excludes the value of the Subscribed Shares. The amount of the Prepayment attributable to the Recycled Shares is $37,471,700. The amount excluded for the Subscribed Shares is $15,000,000.

$37,471,700 / 5,000,000 = $7.49

Technically, the Prepayment and Settlement Amount are formula-based calculations. Using a per-share value nevertheless provides a convenient way to and if the Settlement Amount resulted in a higher weighted average price, the Company would benefit. The opposite is true for Meteora. Unfortunately for the Company, Meteora's rights under the Forward Agreement eliminated any realistic possibility that the Company would benefit from meaningful upside.

For starters, the Forward Agreement calls for the Company to pay Meteora an amount called the "Settlement Amount Adjustment," defined as $1.25 multiplied by the Number of Shares.[29] The Settlement Amount Adjustment functions as a fee of $1.25 paid to Meteora for each share remaining in the Number of Shares on the Valuation Date. Assuming the Number of Shares remains at 5 million, Meteora would receive $7.25 million.[30]

Notably, the formula for the Settlement Amount Adjustment does *not* exclude Unregistered Shares. If there are Unregistered Shares, Meteora pays nothing for them in the Settlement Amount, effectively getting them for free. Meteora still

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perceive the economic substance of the trade and the Company's give and get under the Forward.

[29] FA at 5, Settlement Amount Adjustment. The formula for the Settlement Amount Adjustment defines the payment as "[a] cash amount equal to the product of (1) (w) the Number of Shares as of the Valuation Date *less* (y) the number of Terminated Shares as of the Valuation Date *less* (y) the number of Shortfall Sale Shares, multiplied by (2) $1.25." *Id.* This decision discusses Terminated Shares and Shortfall Sale Shares below. *See infra*, Part I.B.3.a (The Early Termination Option) & Part I.B.3.c (Shortfall Sales). The formula appears to contain an error in that the definition of Number of Shares already accounts for Terminated Shares, so technically the formula calls for deducting them twice. The illustrative calculations in this decision assume the parties intended a single deduction and accounts for that in the Number of Shares.

[30] FA at 5, Settlement Amount Adjustment.

receives $1.25 per share for them in the Settlement Amount Adjustment. In effect, the Company is paying Meteora, rather than Meteora paying the Company, to buy those shares.[31] Slick.

And there is more. Meteora possesses three additional rights that make it realistically impossible for the Company to come out ahead. The only real question is how much less Meteora will pay the Company than it received in the Prepayment.

a. The Early Termination Option

The Forward Agreement authorizes Meteora to designate shares as "Terminated Shares" and remove them from the Number of Shares used to calculate the Settlement Amount (the "Early Termination Option").[32] Meteora can exercise the Early Termination Option at any time and from time to time. If Meteora exercises the Early Termination Option, then Meteora must immediately pay the Company an amount equal to the "reset price" for each share (the "Early Termination Obligation").

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[31] The Forward Agreement achieves this result by treating the Settlement Amount Adjustment not as an adjustment to the Settlement Amount, but as a separate payment. The Forward Agreement does provide, however, that if the Settlement Amount Adjustment would result in the Company owing a net payment to Meteora, then no payment is due. The Settlement Amount Adjustment therefore cannot apply if the per share price used to calculate the Settlement Amount falls below $1.25. The Settlement Amount Adjustment also does not apply if the Meteora unilaterally accelerates the Valuation Date. *Id.*

[32] *Id.* at 6, Optional Early Termination.

The reset price starts at the redemption price of $10.76 but adjusts downward if the Company issues additional shares at a lower price.[33]

The Early Termination Option enables Meteora to capture all of the upside if the Company's shares trade above $10.76 per share. Assume (i) the reset price never adjusts downward and (ii) the Company's shares trade at $13.76. If Meteora hypothetically sells 100,000 shares, it generates $13,760,000 in gross proceeds. Meteora can exercise the Early Termination Option for those shares and pay the Company $10,760,000, reflecting the Early Termination Obligation of $10.76 per share. The Number of Shares declines by the number of Terminated Shares, so Meteora will not have to pay for those shares on the Valuation Date. Meteora pockets $3,000,000 (ignoring transaction costs).

As a practical matter, the Early Termination Option eliminates any possibility that Meteora could pay the Company more than $10.76 per share on any Valuation Date. If the Valuation Date does not accelerate, then Meteora can see it coming months away. If the Valuation Date accelerates, then Meteora can pick when it will occur. And Meteora can sell shares during the Valuation Period or engage in other market activities (other than short sales)[34] that affect the VWAP Price. If Meteora thinks the Settlement Price will exceed $10.76, then Meteora can exercise the Early

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[33] *Id.* at 2, Reset Price. The price does not adjust upward if the Company issues shares at a higher price. That asymmetry benefits Meteora.

[34] *See infra*, Part II.D (explaining that after the Merger closed, the lone restriction on Meteora's trading barred Meteora from engaging in short sales).

Termination Option and pay only $10.76 per share. If Meteora thinks the Settlement Price will be less than $10.76, then Meteora can hold the shares through the Valuation Date and pay the lower Settlement Price. In that setting, Meteora also receives the Settlement Amount Adjustment of $1.25 per share.[35]

If Meteora acted rationally, then the best the Company could hope for would be to receive $10.76 for as many shares as possible under the Early Termination Option. After effectively paying Meteora $7.49 per share immediately after closing, the Company would net $3.27 per share. If Meteora exercised the Early Termination Option for all of the Acquired Shares, the Company would come out ahead in absolute terms by $16,350,000. Those proceeds would likely only arrive after a Valuation Date that occurred 18 months after closing, making the real return less because of the time value of money.

b. Accelerating The Valuation Date

An equally important set of rights under the Forward Agreement gives Meteora optionality around the Valuation Date. The Forward Agreement contains triggers that allow Meteora to accelerate the Valuation Date without losing the Settlement Amount Adjustment, including:

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[35] The Settlement Amount Adjustment does not apply if Meteora chooses to accelerate the Valuation Date unilaterally and an acceleration trigger has not occurred. *See* FA at 2, Valuation Date ("In the event the Valuation Date is determined pursuant to clause (c), the Settlement Amount Adjustment will not apply in calculation of the Settlement Amount" and authorizing Meteora to accelerate the Valuation Date under that settling in its "sole discretion").

- If the Company's stock price trades below $1 per share for any thirty trading days during a forty-five day trading window;
- If the Company's stock is delisted;
- If the Company failed to register "all shares held by [Meteora]" in accordance with the Forward Agreement" (a "Registration Failure").[36]

Meteora can also accelerate the Valuation Date unilaterally, in its sole discretion, but in that setting Meteora gives up the Settlement Amount Adjustment.[37]

Accelerating the Valuation Date potentially creates significant value for Meteora. As a general matter, it closes the Forward earlier, increasing Meteora's internal rate of return. Specific to the Forward, the formula for the Settlement Amount calls for deducting Unregistered Shares from the Number of Shares. The Forward Agreement defines "Unregistered Shares" as any Acquired Shares that were neither registered for resale under an effective registration statement nor eligible to be resold freely under Section 144.[38] As a practical matter, the Recycled Shares were already freely tradable, so the definition only applies to the Subscribed Suares.

The deduction for Unregistered Shares means that Meteora would not have to pay anything to the Company for the Subscribed Shares if they remained Unregistered Shares on the Valuation Date. Meteora would get those shares for free.

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[36] *See* FA at 2, Valuation Date.

[37] *See id.* Also, the price used to calculate the Settlement Payment in that scenario is the prior trading day's closing price, rather than the VWAP Price. *Id.* As discussed previously, the VWAP Price likely favors Meteora.

[38] *See id.* at 5, Settlement Amount.

But as noted previously, the same shares remain in the calculation for purposes of the Settlement Amount Adjustment, so the Company pays Meteora $1.25 for each Unregistered Share.

The Forward Agreement contains requirements making it likely that Meteora could declare a Registration Failure and accelerate the Valuation Date.[39] In a five-paragraph, 1,898-word section titled "Share Registration," the Forward Agreement established two different registration requirements.[40] The first was prominent and required notice from Meteora (the "Notice-Based Registration Requirement"). The other was buried later in the provision and required registration based on specific post-closing deadlines (the "Time-Based Registration Requirement").

The Notice-Based Registration Requirement appears in the first sentence of the first paragraph of the section titled "Share Registration." It requires the Company to use commercially reasonable efforts to file a registration statement at its sole cost and expense "[w]ithin 30 days after receipt of a written request" from Meteora.[41]

The Time-Based Registration Requirement does not appear until midway through the 551-word second paragraph of that same section. That four-sentence paragraph starts by prohibiting the Company from identifying Meteora as a statutory

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[39] *See id.* at 2, Valuation Date (defining "Valuation Date" as the earlier of 18 months after closing or the date specified by Meteora in a written notice following the occurrence of, among other things, "a Registration Failure").

[40] *See id.* at 9–12, Share Registration.

[41] *Id.* at 9.

underwriter, next gives Meteora the option to remove its shares from the registration statement if the SEC requires it, and next addresses the Company's obligation to keep the registration statement in effect. Then comes a 432-word third sentence. Nestled in that linguistic monstrosity are two provisos. The second states:

> [P]rovided further, that it shall be a "Registration Failure" if (a) the Registration Statement covering all of the shares described above in this section is not declared effective after the 90th calendar day (or 120th calendar day if the Commission notifies the Counterparty that it will "review" the Registration Statement) after the Trade Date (provided however, that in the event the Commission issues any written rules related to special purpose acquisition companies that would reasonably effect [sic] the timing of the effectiveness of the Registration Statement and such rules become effective following the date hereof and prior to the effectiveness of the Registration Statement such number of calendar days in this subsection (i) shall be changed to the 120th calendar day) (or 180th calendar day if the Commission notifies the [Company] that it will "review" the effectiveness of the Registration Statement) . . . .[42]

That easily missed obligation required an effective registration statement by the 90th day after the Trade Date of August 25, 2023, resulting in a deadline November 23, 2023. The final sentence of that paragraph introduces a qualifier that states: "Notwithstanding the foregoing, no Registration Failure will be deemed to have occurred with respect to any Shares that may be transferred at such time under Rule 144 . . . ."[43]

For a successor to a SPAC like the Company, previously unregistered shares like the Subscribed Shares remain restricted and cannot be transferred under Rule

[42] *Id.* at 10.

[43] *Id.*

144 until at least one year after the Merger closes.[44] It was thus highly likely that Meteora would be able to declare a Registration Failure unless the Company beat the deadlines for the Time-Based Registration Requirement. Sneaky.

c. Shortfall Sales

A final and less significant means by which Meteora could secure value involves "Shortfall Sales."[45] This mechanism allows Meteora to recapture the Prepayment Shortfall through open market sales.

Starting on the 180th day after the Trade Date of August 25, 2023, the Forward Agreement allows Meteora to sell shares in the open market, without paying any amount to the Company, up to the point where the total proceeds equal the Prepayment Shortfall.[46] The Forward Agreement requires Meteora to notify the Company when it has exercised that right ("Shortfall Sale Shares").[47]

Under the assumptions used to date, the Prepayment Shortfall would be $188,300. Starting on February 21, 2024, Meteora could engage in Shortfall Sales to recover that amount. The higher (lower) the price, the fewer (more) shares Meteora could sell.

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[44] *See* 17 C.F.R. § 240.144(i)(2) (setting a one year holding requirement for unregistered securities in companies that were previously business-combination-related shell companies to be eligible for transfer under Rule 144).

[45] FA at 4, Prepayment Shortfall Consideration; *id.* at 6, Shortfall Sales.

[46] *Id.* at 4, Prepayment Shortfall Consideration.

[47] *Id.* at 6, Shortfall Sales.

Meteora argues that Shortfall Sales reduce the Number of Shares,[48] but nothing in the Forward Agreement calls for that result. Shortfall Sale Shares are deducted from the Settlement Amount Adjustment, but not from the Number of Shares or the Settlement Amount.

The authorization for Shortfall Sales has two principal effects. First, it ensures that the Prepayment Shortfall only looks like a detriment to Meteora. Although deducted from the Prepayment, Meteora can make up that amount through Shortfall Sales.

Second, the provision governing Shortfall Sales creates an opportunity for Meteora to receive more shares. The Company covenanted that until the later of 60 days after closing and Meteora's recapture of 100% of the Prepayment Shortfall, it would not "offer or agree to sell" any shares or securities convertible into shares (the "No-New-Issuance Covenant").[49] If the Company breached the No-New-Issuance Covenant, then the Company had to deliver to Meteora a make-whole amount to compensate for any declines in the price at which Meteora subsequently sold Shortfall

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[48] Dkt. 4 at 11.

[49] *See* FA at 7, Shortfall Sales. The covenant contains exceptions, generally for issuances unrelated to raising capital. The one exception for raising capital authorizes the Company to sell "any Shares issuable pursuant to any convertible offering (or series of convertible offerings) by the Counterparty up to $50,000,000 in the aggregate that is entered into within two (2) months following the consummation of the [Merger]." *Id.*

Shares.[50] The Company could pay the amount in cash or in additional shares valued at 90% of the VWAP Price.[51]

Recall that the Time-Based Registration Requirement obligates the Company to register the Subscribed Shares within 120 days or risk a Registration Failure. That deadline would run before Meteora could begin executing Shortfall Sales. If the Company hustled to file a registration statement that complied with the Time-Based Registration Requirement but offered to sell new shares of its own in addition to the Subscribed Shares, then the Company would trip the No-New-Issuance Covenant and have to issue more shares to Meteora. Devious.

4. Summing Up

As this description shows, the Meteora Transaction is highly favorable to Meteora. At its core, the structure operates like a synthetic long put option. That type of trade mimics the returns achieved by selling shares short while protecting against a rising stock price with a call option (usually at-the-money) to buy the stock back at a strike price. The trade makes money on the short leg if the stock falls. The trade avoids losses on the short leg and captures value through the call option if the stock price rises above the strike price.

The combination of the Prepayment and the Early Termination Option work together to create the same dynamic. Meteora makes money based on the difference

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[50] That is the basic idea. The formula is exceedingly complex, and greater detail is not warranted.

[51] FA at 7, Shortfall Sales.

between the Prepayment and the Settlement Amount. The difference grows, and Meteora makes more money, as the Settlement Price falls. That leg of the trade is economically equivalent to shorting the Acquired Shares. The Early Termination Option operates like a call option with a strike price of $10.76 per share. It caps any loss Meteora would suffer on the short leg at prices above the strike price and enables Meteora to capture the upside for itself.

For Meteora, the Forward Agreement is far better than a long put option. When building a long put option, a trader has to pay fees to borrow the shares to short, and then to acquire the call options. In an efficient market, a trader should not be able to make significant profits. Any value discrepancy that enables the trade to work will quickly be arbitraged away.

The Forward Agreement is a magically good alternative. Meteora does not have to borrow shares for the short leg: After the Prepayment it holds the 5 million Acquired Shares. Meteora also does not have to pay for call options. It gets the Early Termination Option for free under the Forward Agreement. Instead of paying fees, Meteora *receives* a fee of $1.25 per share in the form of the Settlement Amount Adjustment. Meteora's only capital at risk is the Prepayment Shortfall, and Meteora can recapture that small amount through Shortfall Sales.

The Forward Agreement then layers on other benefits. The strike price of $10.76 per share ratchets down if the Company issues shares or equity convertible into shares at a lower price, increasing the value of the option.[52] In a garden-variety option, the strike price does not move. Meteora can also accelerate the Valuation Date, capturing value sooner and increasing its internal rate of return. Declaring a Registration Failure is the most likely path, and any failure to register the Subscribed Shares allows Meteora to deduct them from the Number of Shares, pay nothing for them in the Settlement Amount, while still receiving $1.25 for each Unregistered Share in the Settlement Amount Adjustment.

That is an amazing deal for Meteora. In exchange, the SPAC and the Company would get to close the Merger without waiving the Minimum Cash Condition, although the Company would end up with less cash immediately after closing than if the parties had simply waived it. The Company would have a path to capture $16,350,000, but the road would be a narrow one beset by Meteora's contract rights. Of course, the Company would get a public listing, but it could have gotten that simply by waiving the Minimum Cash Condition.

C. The Meteora Transaction Unfolds.

All of the risks of the Meteora Transaction were plain from the Transaction Documents. To demonstrate that point, the preceding discussion has outlined how the Meteora Transaction would work based on the minimum number of Recycled Shares that Meteora committed to buy and the corresponding number of Subscribed

[52] *See id.* at 2, Dilutive Offering Reset.

Shares that Meteora would purchase. Two major law firms advised the Company on the Merger and the Meteora Transaction. All the Company had to do was map it out.

As events actually transpired, Meteora did even better.

1. The Merger Closes.

The Merger closed on September 20, 2023. Before closing, Meteora purchased 4,297,745 Recycled Shares at undisclosed prices, but inferably below both the Redemption Price of $10.76 per share *and* the price of $10 per share for Subscribed Shares.[53] The fact that Meteora purchased 797,745 more Recycled Shares than required supports that inference, because otherwise Meteora would have preferred to buy the maximum number of Subscribed Shares at $10 per share. Meteora purchased only 702,255 Subscribed Shares at $10 per share.[54]

For purposes of the Prepayment Amount, the value of the Recycled Shares was $46,243,736.20. The value of the Prepayment Shortfall was $231,218.68. The cost of

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[53] The record contains conflicting figures. The above-the-line figures appear in the Company's preliminary S-1 from April 2024. PX 9 at F-52. A June 2024 email from Meteora confirming the number of Shortfall Share Sales uses the same number of Subscribed Shares. So does a letter from Meteora's counsel. *See* PX 14. But Meteora's actual pricing date notice designates 4,300,930 Recycled Shares and 699,070 Subscribed Shares. PX 8. An email from early 2024 uses the figures in the pricing date notice. DX G. So does a March 2025 letter from Meteora. Compl. Ex. J. A higher number of Recycled Shares benefits Meteora by increasing the size of the Prepayment. It is unclear how this discrepancy came about or which set of numbers is correct. That factual uncertainty, however, is not material to the legal issues presented by Meteora's motion for summary judgment.

[54] In correspondence with the Company, Meteora later claimed that nearly 99% of the SPAC's shares were submitted for redemption. *See* PX 14 at 3. That could not be true, because in that case the Minimum Cash Condition would have failed even with the Meteora Transaction.

the Subscribed Shares was $7,022,550. The Prepayment Amount was therefore $53,035,067.52. Netting out the payment of $7,022,550 for the Subscribed Shares resulted in a Prepayment of $46,012,517.52. Meteora also inferably received reimbursement of $50,000 for legal expenses plus $0.07 per Recycled Share for a total of $350,842.[55]

Immediately after closing, therefore, the Company wired Meteora $46,363,359.52. At that point, Meteora also owned the 5 million Acquired Shares. The Company effectively paid Meteora $9.27 per share, higher than the effective value of $7.49 per share used to illustrate how the Meteora Transaction would work because of the larger number of Recycled Shares.[56] The higher effective value benefits Meteora because it is a function of a higher Prepayment. The higher effective value also narrows the spread where the Company can come out ahead.

At that point, Meteora had set up its synthetic long put. Meteora had received the Prepayment and would benefit from any Settlement Price below the Early Termination Option strike price of $10.76 per share (with the potential for that price to ratchet downward). The more the Company's stock price fell, the more Meteora

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[55] The Forward Agreement authorizes Meteora to receive "expenses actually incurred in connection with the acquisition of the Recycled Shares (other than Recycled Shares held by Seller as of the date hereof) in an amount not to exceed $0.07 per such Recycled Share." FA at 5, Reimbursement of Legal Fees and Other Expenses. The "date hereof" is August 25, 2023. *Id.* at 1. For purposes of summary judgment, the court infers that Meteora acquired all of the Recycled Shares after the date of the Forward Agreement.

[56] $9.27 = $46,363,359.52 / 5,000,000.

would gain. In substance, Meteora was short the Acquired Shares. If the stock traded higher, then Meteora could exercise the Early Termination Option and force the Company to take $10.76 per share. Meteora could also engage in Shortfall Sales to recover the Prepayment Shortfall, the only capital that Meteora had at risk.

2. Initial Post-Merger Events

After the Merger closed, the Company's stock traded up and reached a high of $17 per share. Then the price began to fall. By December 2023, it had dropped below $10 per share.

The Time-Based Registration Requirement in the Forward Agreement required the Company to have a registration statement declared effective for the Subscribed Shares by the 90th day after the Trade Date. That deadline passed on November 23, 2023. The Company did not meet that deadline or any subsequent deadlines in the Forward Agreement.

The Subscription Agreement had registration-related deadlines of its own. As explained in the Legal Analysis, the Company had to file a registration statement by October 20, 2023, then obtain an effective registration statement by December 19, 2023.[57] The Company did not meet those or any other deadlines in the Subscription Agreement.

On April 16, 2024, the Company filed a Form S-1 registration statement for the issuance and sale of new shares, but excluded the Subscribed Shares. By offering

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[57] *See* SA §5(a).

to sell new shares, the Company breached the No-New-Issuance Covenant and opened itself up to owing a make-whole amount to Meteora, payable in cash or in additional shares valued at a discount to the VWAP Price. The Company later withdrew the Form S-1, suggesting that any breach of the No-New-Issuance Clause was a technical one at worst.

On May 29, 2024, Meteora asked the Company by email for an update on registering the Subscribed Shares.[58] Meteora's email did not mention the Time-Based Registration Requirement and related Registration Failure under the Forward Agreement, the No-New-Issuance Covenant and potential make-whole amount under the Forward Agreement, or the registration-related deadlines in the Subscription Agreement.

That same day, the Company's General Counsel responded: "I believe that we need to finalize our year-end numbers before we can file another registration statement. We expect to file our 10-K in the second half of June and then work on a registration statement." [59] That response did not mention the Time-Based Registration Requirement and related Registration Failure or the No-New-Issuance Covenant and potential make-whole amount. The Company's silence and its inferable

[58] See PX 11 ("We wanted to check on the timing of registration of the FPA Subscribed Shares. It would be great to have them registered soon to maximize the value of the FPA upon share price movements.").

[59] *Id.*

lack of urgency suggest it was not focused on those requirements or their implications.

The Company filed its Form 10-K on July 1, 2024. After completing that filing, the Company did not begin work on a registration statement for the Subscribed Shares. The Company's lack of activity again suggests it was not focused on the Transaction Agreements' requirements or their implications.

On July 3, 2024, Meteora notified the Company that Meteora had sold 880,610 Shortfall Shares, thereby satisfying the Prepayment Shortfall.[60] It is not clear whether Meteora believed at this point it was entitled to a make-whole amount based on the technical breach of the No-New-Issuance Covenant.

3. Meteora Declares A Registration Failure.

On July 9, 2024, Meteora sent the Company a Formal Notice of Acceleration of Valuation Date due to Registration Failure (the "Failure Notice"). Meteora asserted that the Company's failure to comply with the Time-Based Registration Requirement constituted a Registration Failure and that Meteora was exercising its right to commence the Valuation Period effective July 8, 2024. Meteora asserted that because of the Registration Failure, the Settlement Amount would not contain any amount for the Subscribed Shares.[61]

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[60] *See* PX 18.

[61] See PX 12.

On September 26, 2024, the Subscribed Shares became eligible for public resale under Rule 144 of the Securities Act of 1933.[62] At that point. Meteora no longer needed the Company to register the Subscribed Shares, only to lift the trading restrictions on them.

One month later, on October 31, 2024, the Company notified Meteora by email that it intended to file a shelf registration statement and asked Meteora to identify any shares it wanted to include and complete a questionnaire.[63] That communication and its irrelevance to Meteora's situation suggests that the Company either did not fully comprehend or was ignoring the terms of the Transaction Agreements.

On November 6, 2024, Meteora responded to the Company's email. Meteora noted that it was not seeking to have the Subscribed Shares registered and that those shares were eligible for sale under Rule 144.[64] Meteora asked the Company to confirm that it would instruct its transfer agent to remove any restrictions on the Subscribed Shares.[65] The Company did not respond.

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[62] 17 C.F.R. § 240.144.

[63] See PX 13.

[64] *Id.*

[65] *Id.*

4. The Company Disputes Meteora's Rights.

In December 2024 and again in March 2025, the Company disputed the validity of the Failure Notice and contested the rights that Meteora claimed to have.[66] Among other objections, the Company claimed that Meteora breached the Forward Agreement by selling Recycled Shares without designating them as either Shortfall Shares or Terminated Shares. The Company contended that Meteora could only sell shares either through Shortfall Sales or under the Early Termination Option. The Company agreed that Meteora properly engaged in Shortfall Sales but argued that Meteora's Schedule 13F showed that it sold another 2,639,499 shares without designating them as Terminated Shares.[67]

Meteora argued that the Forward Agreement authorized three types of sales.

- First, it could engage in Shortfall Sales. Under that mechanism, Meteora could keep all of the proceeds but had to notify the Company so that the Shortfall Sale Shares would be removed from the Number of Shares used for the Settlement Payment calculation.[68]

- Second, it could exercise the Early Termination Option. Under that mechanism, Meteora could identify Terminated Shares, pay the Company $10.76 per share, and give notice to the Company so the Terminated Shares would be removed from the Number of Shares used for the Settlement Payment calculation. Meteora did not have to sell the Terminated Shares, only give notice to the Company and pay $10.76 per Terminated Share.

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[66] *See* Compl. Exs. G, I.

[67] *See* DX F.

[68] That is what Meteora asserted. The Forward Agreement does not appear to call for deducting the Shortfall Sale Shares from the Number of Shares used for the Settlement Payment calculation. It calls for deducting them for purposes of the Settlement Payment Adjustment.

- Third, Meteora could simply sell shares without any notice or payment to the Company, but without reducing the Number of Shares. Meteora would still owe the Company for those shares as part of the Settlement Payment calculation.

Meteora argued that it properly sold the 2,639,499 shares under the third path.[69]

5. Meteora Calculates The Settlement Amount

The Valuation Period that the Failure Notice initiated came to an end on December 24, 2024. The VWAP Price for the Valuation Period was $1.8094 per share.[70]

Meteora calculated that on the Valuation Date, the Number of Shares was 3,906,622. Meteora submitted the following calculation:

Initial Recycled Shares	4,297,745
OET Shares	(212,728)
Shortfall Sale Shares	(880,610)
Ending Recycled Shares	3,204,407
Additional Shares	702,255
Number of Shares	3,906,662

[69] *See* PX 14 at 2–3; Compl. Ex. J at 4.

[70] *See* PX 14, Ex. A at 2.

The formula for the Settlement Amount calls for deducting Unregistered Shares from the Number of Shares, then multiplying that figure times the Settlement Price of $1.8094 per share. The resulting Settlement Amount was $5,798,054.03.[71]

The formula for the Settlement Amount Adjustment does not call for deducting Unregistered Shares. Meteora applied the Settlement Amount Adjustment of $1.25 per share across the entire Number of Shares. The resulting total Settlement Amount Adjustment was $4,888,327.50.[72]

The Forward Agreement calls for netting the two payments and for Meteora to pay the Company any positive amount. The difference between the Settlement Amount and the Settlement Amount Adjustment was $914,726.53.[73]

For comparison, the Company wired Meteora a Prepayment of $46,012,517.52 plus expense reimbursement of $350,842, for a total of $46,363,359.52. Subtracting

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[71] *Id.* at 3. $5,798,054.03 = $1.8094 * 3,204,407. As this decision has observed, the formula for the Settlement Amount does not call for deducting the Shortfall Shares from the Number of Shares. Only the formula for the Settlement Amount Adjustment does. *See* FA at 5, Settlement Amount and Settlement Amount Adjustment; *see also id.* at 19, Transaction by Seller in the Shares ("Any Recycled Shares that are not Shortfall Sale Shares and [Subscribed] Shares sold by Seller during the term of the Transaction and included on [Termination Notice] will cease to be included in the Number of Shares."). In performing its calculations, Meteora used the "Ending Recycled Shares" to calculate the Settlement Amount. That number deducted both the Terminated Shares and the Shortfall Shares. Meteora thus excluded the Shortfall Sales from its Settlement Amount calculation, even though the Forward Agreement does not provide for that. For purposes of summary judgment, this decision uses Meteora's calculations. The parties will have to address this issue before the court awards any amount of damages to Meteora.

[72] *Id.* at 2. $4,888,327.50 = $1.25 * 3,906,662.

[73] *See* PX 14 at 1.

Meteora's proposed Settlement Amount of $914,726.53 leaves Meteora with a net gain on the Forward of $45,097,790.99. That amount ignores the additional profits Meteora inferably generated by acquiring the Recycled Shares at prices below $10.76 per share, by selling 2,639,499 shares in the market for inferably more than $10.76 per share, and by selling 212,728 Terminated Shares in the market for inferably more than the $10.76 per share paid to the Company under the Early Termination Option.

Contrast that with what the Company received. If the parties had waived the Minimum Cash Condition and closed, the Company would have emerged from closing with $29,900,000 in cash. With the Meteora Transaction, the SPAC paid out $122,370,262.76 in redemptions [74] and reached closing with net cash of $76,129,737.24. [75] Immediately after closing, the Company wired Meteora $46,363,359.52 in cash, leaving the Company with $29,766,377.72 in cash from the SPAC, $133,622.28 less than what the Company would have had if the parties had waived the Minimum Closing Condition. With the Settlement Amount of $914,726.53, the Company benefited in absolute terms by $781,104.25. Meteora did not offer to pay the Settlement Amount until fifteen months after closing, and discounting that amount by the Company's weighted average cost of capital would made the difference far less.

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[74] SPAC stockholders tendered 15,670,446 Class A shares for redemption. Meteora acquired 4,297,745 tendered shares in the market. That left 11,372,701 shares tendered for redemption at $10.76 per share.

[75] Pre-redemption cash of $198,500,000 minus $122,370,262.76 in redemptions equals $76,129,737.24.

The Company's stockholders bore the real cost. Without the Meteora Transaction, the SPAC would have redeemed shares, reducing the public float. And the Company would not have diluted the public float by issuing the Subscribed Shares, which Meteora received for zero consideration under its calculation of the Settlement Amount due to the Registration Failure. The dilution suffered by the Company's stockholders funded Meteora's profits.

D. The Amended Forward

Effective January 30, 2024, the parties amended the Forward Agreement (the "Forward Amendment").[76] Unlike the original Forward Agreement, the Forward Amendment was a straightforward, though expensive, means for the Company to obtain capital.

The Forward Amendment authorized the Company to make up to ten separate draws, each in the amount of $500,000. Once Meteora funded a request, it could designate the amount as Prepayment Shortfall and recover 117% of its value by engaging in Shortfall Sales. Meteora could effectively capture $85,000 in profit for each $500,000 tranche. Otherwise, the Forward Agreement's mechanisms remained the same.

The Forward Amendment was a backdoor way for the Company to raise capital by issuing shares. Meteora served as the middleman in return for its 17% fee. The

[76] *See* PX 16.

Company's stockholders bore the dilution and any decline in the stock price caused by Meteora's sales.

E. Litigation Ensues

On April 17, 2025, the Company sued Meteora in Florida state court claiming breach of contract and breach of the implied covenant of good faith and fair dealing. The Company demanded $72 million in damages.

Meteora responded the next day by filing this action against the Company. The Complaint contains two counts. Count I seeks a declaratory judgment that (i) Meteora performed all of its obligations under the Forward Agreement and Subscription Agreement; (ii) the Company failed to register the Subscribed Shares, resulting in a Registration Failure under the Forward Agreement; and (iii) the Valuation Period expired and Meteora's payment obligation to the Company is $914,726.53. Count II asserts that the Company breached the Subscription Agreement by failing to register the Subscribed Shares or make them available for resale under Rule 144. Meteora seeks a decree of specific performance requiring the Company to remove the transfer restrictions on the Subscribed Shares.

One month later, on May 14, 2025, Meteora moved for summary judgment. That motion seeks declarations that (i) Meteora complied with its obligations under the Transaction Agreements, (ii) Meteora did not breach the Forward Agreement when selling Recycled Shares, and (iii) the Company breached the Subscription Agreement by failing to register the Subscribed Shares or make them available for resale. In its motion, Meteora seeks a decree of specific performance requiring the Company to make the Subscribed Shares eligible for resale.

The Company tried to remove this action to federal court.[77] The federal court granted Meteora's motion to remand.[78]

After remand, the Company failed to file a timely response to the complaint. Meteora moved for a default judgment.

With Meteora's motion for default judgment pending, the Company's counsel withdrew. The Company then hired New York counsel to file a new lawsuit in the United States District Court of the Southern District of New York (respectively, the "New York Action" and the "New York Court"). The New York Action named as defendants not only Meteora but also its employees. The Company asserted claims for breach of the Forward Agreement, fraud, federal securities law violations, and RICO violations. After filing the New York Action, Meteora dismissed the Florida action.

After securing new Delaware counsel, the Company answered the complaint and raised eleven affirmative defenses.[79] The Company also opposed Meteora's motion for default judgment.[80] The court denied that motion on November 6, 2025.[81] The parties then completed briefing Meteora's motion for summary judgment.

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[77] Dkt. 8.

[78] Dkt. 12.

[79] Dkt. 20 at 28–30.

[80] Dkts. 20–21.

[81] Dkt. 25.

On July 9, 2026, the New York Court issued a decision granting the defendants motion to dismiss that case (the "New York Decision").[82] The parties dispute the relevance of the New York Decision to this case.

II. LEGAL ANALYSIS

Court of Chancery Rule 56(a) permits the entry of summary judgment when "there is no genuine issue as to any material fact" and "the moving party is entitled to a judgment as a matter of law."[83] Summary judgment "may be rendered on the issues of liability alone although there is a genuine issue as to the amount of damages, or some other matter."[84]

A. The Company's Rule 56(d) Argument

The Company strives to head off summary judgment by invoking former Rule 56(f), now Rule 56(d). The rule currently states:

> If a nonmovant shows by affidavit that, for specified reasons, it cannot present facts essential to justify its opposition [to a motion for summary judgment], the Court may: (1) defer considering the motion or deny it; (2) allow time to obtain affidavits or to take discovery; or (3) issue any other appropriate order.[85]

The Company contends that it needs discovery to present facts essential to its opposition.

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[82] Dkt. 45.

[83] Del. Ct. Ch. R. 56(a).

[84] *Chamison v. Healthtrust, Inc.-Hosp. Co.*, 1997 WL 695576, at *2 (Del. Ch. Oct. 29, 1997).

[85] *Id.* R. 56(d).

New Rule 56(d) conformed the language of old Rule 56(f) to Federal Rule of Civil Procedure 56(d), thereby facilitating reliance on federal decisions as persuasive authority. It did not make any substantive change in the law. When invoking the new rule, as under the old rule, the "non-moving party shoulders the onus to state with some degree of specificity, the additional facts sought by the requested discovery."[86] A party is not entitled to discovery under the rule as of right; the rule's application "is necessarily circumscribed by the discretion of the trial court."[87]

The court can reject the Company's Rule 56(d) request as to the interpretation of Transaction Agreements because those documents are unambiguous. When that is the case, a court need not "open the door to discovery simply because the parties disagree about the meaning of . . . unambiguous terms."[88] The Company has not "demonstrated a need for further particularized discovery . . . [because] the issue is one of law turning upon interpretation" of the Transaction Agreements.[89] The affidavit fails to identify any factual issues that are material to interpreting the

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[86] *Archlight Cap. P'rs, LLC v. Lexington Ins. Co.*, 2026 WL 1383078, at *15 (Del. Super. May 18, 2026) (citation omitted).

[87] *Advent Int'l L.P. v. Servicios Funerarios GG S.A. DE C.V.*, 2026 WL 1328460, at *3 (Del. Ch. May 12, 2026).

[88] *In re Verizon Ins. Coverage Appeals*, 222 A.3d 566, 572 (Del. 2019).

[89] *Mann v. Oppenheimer & Co.*, 1985 WL 11555, at *1 (Del. Ch. Apr. 4, 1985).

governing agreements.[90] The Transaction Agreements are complex, and they take time to read and explain, but their meaning is clear.

The Company also requests discovery pertaining to its affirmative defenses, but that request falls short on multiple grounds. First, the affirmative defenses are conclusory and fail on that basis.[91] Conclusory defenses are not a path to discovery.[92]

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[90] *Fisher v. Del. River and Bay Auth.*, 2020 WL 1150208, at *3 (Del. Super. Mar. 9, 2020).

[91] *See* Ch. Ct. R. 8(c)(3) ("*Supporting an Affirmative Defense*. The pleading must provide a short and plain statement of the basis for the affirmative defense."); *Cypress Assocs., LLC v. Sunnyside Cogeneration Assocs. Project*, 2007 WL 148754, at *18 (Del. Ch. Jan. 17, 2007) (affirmative defenses must be supported by plead facts); *Westerly Winds USA, Inc. v. Kuhl*, 2026 WL 1481702, at *3 (Del. Super. May 20, 2026) ("[C]onclusory, single-sentence boilerplate recitations of affirmative defenses are insufficient to defeat an otherwise well-supported motion for judgment on the pleadings."); *Faraday, Inc. v. Ideal Image Dev. Corp.*, 2026 WL 883220, at *3 (Del. Super. Mar. 30, 2026) ("The Court further concludes that the identified affirmative defenses are, as pled, insufficient under Rule 12(f) because they are unsupported by factual allegations tied to the dispute, are conclusory, or otherwise are not germane as framed to the breach of contract claim as pled in this action."); *see also, e.g.*, *Tygon Peak Cap. Mgmt., LLC v. Mobile Invs. Investco, LLC*, 2023 WL 4857281, at *6–7 (Del. Ch. July 31, 2023) (striking affirmative defenses of estoppel and acquiescence as conclusory where the defendant failed to plead reliance), *aff'd* 315 A.3d 445 (Del. 2024); *Leaf Invenergy Co. v. Invenergy Wind LLC*, 2016 WL 3566365, at *3 (Del. Ch. June 30, 2016) (holding that a conclusory affirmative defense was insufficient to warrant denial of motion for judgment on the pleadings); *Di Loreto v. Tiber Hldg. Corp.*, 1999 WL 1261450, at *4 n.9 (Del. Ch. June 29, 1999) (dismissing conclusory affirmative defenses); *Wellgistics, LLC v. Welgo, Inc.*, 2024 WL 113967, at *8–9 (Del. Super. Jan. 9, 2024) (striking conclusory affirmative defenses of fraud and estoppel).

[92] *Kurz v. Holbrook*, 2009 WL 4682622, at *6 (Del. Ch. Dec. 1, 2009) (dismissing an unclean hands defense because it was alleged "in conclusory fashion without providing any supporting allegations," and holding that "[t]he rote recitation of an unclean hands defense is not a free pass to conduct discovery").

Second, the affirmative defenses of laches,[93] ripeness,[94] lack of subject matter jurisdiction,[95] dismissal in deference to the now-dismissed Florida action,[96] and for failure to establish any damages[97] would fail on the pleadings as a matter of law. Others depend on contractual arguments that are inherently part of the claims for

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[93] Ans., First Affirmative Defense ("Plaintiffs' claims are barred pursuant to the equitable doctrine[] of laches."). The complaint demonstrates on its face that the action is timely.

[94] *Id.*, Eighth Affirmative Defense ("Plaintiffs' Complaint . . . is not yet ripe and payment is not yet due to Plaintiffs under the terms of the applicable agreements."). The complaint demonstrates on its face that the dispute is ripe.

[95] *Id.*, Seventh Affirmative Defense ("Jurisdiction . . . in the Delaware Court of Chancery is improper because the Complaint seeks monetary relief disguised as injunctive relief."). The complaint demonstrates on its face that Meteora has properly requested equitable relief, giving this court jurisdiction.

[96] *Id.*, Seventh Affirmative Defense ("[V]enue in the Delaware Court of Chancery is improper because . . . while the [FA] includes a New York choice of law provision, it does not include a venue provision establishing jurisdiction in this Court, and an action has already been filed in Florida related to the interpretation of that agreement."). The Company has dismissed the Florida action. The Subscription Agreement chooses the courts of Delaware as the exclusive forum for disputes. *See* SA § 8(q).

[97] *Id.*, Tenth Affirmative Defense ("Plaintiffs' claims fail in whole or in part due to the failure to establish any damages."). Unless a party seeks special damages, damages can be pled generally. *Bamford v. Penfold, L.P.*, 2020 WL 967942, at *21 (Del. Ch. Feb. 28, 2020). Meteora has stated that it plans to seek damages, and the Company can oppose that relief.

breach of contract and the analysis this decision must conduct.[98] One is nonsensical.[99] In the interest of brevity, the court has not addressed these defenses in greater detail.[100]

Third, the New York Decision dismissed versions of the affirmative defenses that the Company advanced as affirmative claims, supported by allegations in a complaint. The New York Decision is not preclusive, because the court dismissed the complaint with leave to replead as to one claim for breach of contract. Only a final judgment has preclusive effect.[101] An order dismissing some claims with prejudice

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[98] *Id.*, Third Affirmative Defense ("Plaintiffs' causes of action are barred because all conditions precedent have not yet occurred."); *id.*, Fourth Affirmative Defense ("Defendant has not materially breached any provision of the applicable agreements."), *id.*, Sixth Affirmative Defense ("Plaintiffs' claims may be barred in whole or in part due to Plaintiffs' material breaches and failures to materially comply with the terms of the applicable agreements."); *id.*, Eighth Affirmative Defense ("Plaintiffs' Complaint . . . is not yet ripe and payment is not yet due to Plaintiffs under the terms of the applicable agreements."); *id.*, Tenth Affirmative Defense ("Plaintiffs' claims fail in whole or in part due to the failure to establish any damages.").

[99] *Id.*, Eighth Affirmative Defense ("Plaintiffs' Complaint is premature given the existence of additional claims asserted by Defendant against Plaintiffs[.]").

[100] To be clear, in conducting this analysis, the court is not striking the affirmative defenses *sua sponte*. The court is ruling on the Company's argument under Rule 56(d) and explaining why the affirmative defenses are insufficient to support either denying Meteora's motion for summary judgment or deferring a ruling on it so that the Company can conduct discovery.

[101] *See St. Pierre v. Dyer*, 208 F.3d 394, 399 (2d Cir. 2000) ("[A] final judgment on the merits of an action precludes the parties or their privies from relitigating issues that were or could have been raised in that action." (citation omitted)); *In re Teltronics Servs., Inc.*, 762 F.2d 185, 190 (2d Cir. 1985) (explaining that preclusion requires "(1) a final judgment on the merits, (2) by a court of competent jurisdiction,

remains interlocutory as long as the case continues as to other claims.[102] The parties have not informed the court whether the Company repled its contract claim, but for purposes of Meteora's motion for summary judgment, the court infers that it did.[103]

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(3) in a case involving the same parties or their privies, and (4) involving the same cause of action").

[102] *See Doe v. Columbia Univ.*, 2022 WL 16856158, at *2 (S.D.N.Y. Nov. 10, 2022) ("A partial dismissal is a quintessentially nonfinal order."); *accord Gortat v. Capala Bros., Inc.*, 2009 WL 10706563, at *2 (E.D.N.Y. May 4, 2009) ("When a district court dismisses some but not all of the claims in a case, the order of dismissal is not a final decision[.]"); *see also Oriental Art Printing Inc. v. GS Printing Corp.*, 34 F. App'x 401, 402 (2d Cir. 2002) ("[A]n order that adjudicates fewer than all of the claims remaining in the action, or adjudicates the rights and liabilities of fewer than all of the remaining parties, is not a final order unless the court directs entry of final judgment as to the dismissed claims or parties upon an express determination that there is no just reason for delay." (citation omitted)). A dismissal with leave to amend is also not a final order. *See Whitfield v. Johnson*, 763 F. App'x 106, 107 (2d Cir. 2019) ("A dismissal with leave to amend is a non-final order and not appealable." (citation omitted)); *Spinelli v. Nat'l Football League*, 2015 WL 4869898, at *2 (S.D.N.Y. Aug. 13, 2015) ("It is well established in this Circuit that a district court's order dismissing a complaint with leave to replead is not final and therefore not appealable.").

Meteora moved to provide supplemental briefing on preclusion. Dkt. 47. This decision renders that motion moot, and the court will deny the motion on that basis. This decision has not ruled on the Company's affirmative defenses beyond holding that they do not warrant discovery under Rule 56(d). If Meteora wishes to move for summary judgment on those affirmative defenses, including on the basis of preclusion, it has that arrow in its quiver. The court offers no opinion on the merits of any future motion.

[103] Deciding not to amend or letting the deadline for amendment pass can turn an otherwise non-final dismissal into a final and appealable order. *See Fay v. Barbera*, 2025 WL 1554491, at *1 n.1 (2d Cir. June 2, 2025) ("A dismissal with leave to amend is a non-final order and not appealable. However, an appellant can render such a non-final order 'final' and appealable by disclaiming any intent to amend."(citation omitted)); *Whitfield*, 763 F. App'x at 107 ("However, we will treat a premature appeal from a judgment granting leave to amend as an appeal from a final judgment if the deadline for amendment has passed."). If further motion practice

The New York Decision nevertheless remains persuasive on the question of whether the Company's affirmative defenses warrant discovery. The New York Decision dismissed the New York Action in its entirety. That ruling, based on allegations in a complaint, indicates that the Company cannot rely on Rule 56(d) based on a conclusory defense of unclean hands that cites the "wrongful and improper conduct as set forth in [the] NY Complaint."[104]

The New York Decision dismissed

- Claims for fraud, fraud in the inducement, and misrepresentation.[105]
- Claims for stock manipulation in violation of the federal securities laws.[106]
- Claims for RICO violations.[107]

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ensues on the preclusion issue, the parties must clarify the status of the New York Decision.

[104] Ans., Ninth Affirmative Defense ("Plaintiffs are barred from pursuing this action against Defendant due to the doctrine of unclean hands, in that, among other things, Plaintiffs have engaged in wrongful and improper conduct as set forth in Defendant's FL Complaint and NY Complaint attached as Exhibit A, including without limitation, upon information and belief: 1) fraud/fraudulent inducement; 2) misrepresentation; 3) breach of contract; 4) breach of covenant of good faith and fair dealing; 5) violation of 18 U.S.C. § 1961-1968 (RICO); 6) violation of 15 U.S.C. § 77q(a) (securities fraud); 7) violation of 15 U.S.C. § 78(j) and 17 U.S.C. §§ 240.10b-5 and 240.10(b) (stock manipulation); and 8) unjust enrichment.").

[105] New York Decision at 13–14.

[106] *Id.* at 17–18.

[107] *Id.* at 20.

Those rulings, based on allegations in a complaint, indicate that the Company cannot rely on Rule 56(d) based on a conclusory defense that "[t]he agreements relied upon by Plaintiffs are void or voidable as being procured by fraud."[108]

The New York Decision also dismissed a set of breach of contract claims, including:

- A claim that Meteora and the Company entered into a binding term sheet, that its terms were incorporated into the Transaction Agreements, and that Meteora's conduct breached those terms.[109]
- A claim that Meteora failed to provide funds to the Company under the Forward Amendment.[110]
- A claim that Meteora sent the Failure Notice in bad faith to drive down the Settlement Price and without providing the Company with a 30-day cure period.[111]
- A claim that Meteora breached the Forward Agreement by failing to give notice the Company when it sold shares.[112]
- A claim for breach of the implied covenant of good faith and fair dealing grounded on the assertion that Meteora "engag[ed] in transactions that drove down the market price of [Company] shares and further failed to conduct themselves and itself consistent with the terms of the [Forward Agreement]."[113]

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[108] Ans., Second Affirmative Defense.

[109] New York Decision at 8.

[110] *Id.* at 10.

[111] *Id.*

[112] *Id.* at 11.

[113] *Id.* at 16.

Those rulings, based on allegations in a complaint, indicate that the Company cannot rely on Rule 56(d) to defer or defeat summary judgment based on conclusory assertions of waiver, ratification, and estoppel[114] or antecedent breach.[115] Nothing about the Meteora Transaction suggests mutual mistake.[116]

The purported need for discovery into either Meteora's claims under the Transaction Agreements or the Company's affirmative defenses does not warrant denying or deferring a ruling on Meteora's motion. The Company has not made the requisite showing under Rule 56(d).

B. Governing Legal Principles

Meteora's motion for summary judgment seeks determinations under the Forward Agreement and the Subscription Agreement. Those issues present questions of contract interpretation.

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[114] Ans., First Affirmative Defense ("Plaintiffs' claims are barred pursuant to the equitable doctrines of . . . waiver, ratification, and estoppel.")

[115] *Id.*, Sixth Affirmative Defense ("Plaintiffs' claims may be barred in whole or in part due to Plaintiffs' material breaches and failures to materially comply with the terms of the applicable agreements.").

[116] *Id.*, Fifth Affirmative Defense ("Plaintiffs' claims may be barred in whole or in part due to a mutual mistake."). At a minimum, Meteora knew exactly what it was doing. The Company and its sophisticated lawyers should have known.

New York law governs the Forward Agreement.[117] Delaware law governs the Subscription Agreement.[118] Fortunately, "New York and Delaware law are generally harmonious in their approach to contract interpretation."[119] "Both [states] enforce the plain meaning of agreements, apply similar principles of contract interpretation, and only look to extrinsic evidence in the event of ambiguity."[120] The parties have chosen to cite only Delaware cases. This decision follows their lead.

Under Delaware law, the role of a court when interpreting a contract is "to effectuate the parties' intent."[121] In upholding the intentions of the parties, a court must "must give effect to all terms of the instrument, must read the instrument as a whole, and, if possible, reconcile all the provisions of the instrument."[122] "[T]he meaning which arises from a particular portion of an agreement cannot control the

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[117] FA at 16, Governing Law (designating New York law as the governing law).

[118] SA at §8(o) ("This Subscription Agreement shall be governed by, and construed in accordance with, the laws of the State of Delaware . . . .").

[119] *Rohe v. Reliance Training Network, Inc.*, 2000 WL 1038190, at *8 (Del. Ch. July 21, 2000) (citations omitted) ("[E]ach state emphasizes the interpretive primacy of giving effect to the parties' intention as expressed by the written words of their agreements.").

[120] *Finger Lakes Cap. P'rs, LLC v. Honeoye Lake Acq., LLC*, 2015 WL 6455367, at *14 n.4 (Del. Ch. Oct. 26, 2015).

[121] *Lorillard Tobacco Co. v. Am. Legacy Found.*, 903 A.2d 728, 739 (Del. 2006).

[122] *Id.*

meaning of the entire agreement where such inference runs counter to the agreement's overall scheme or plan."[123]

Absent ambiguity, the court "will give priority to the parties' intentions as reflected in the four corners of the agreement, construing the agreement as a whole and giving effect to all its provisions."[124] "Unless there is ambiguity, Delaware courts interpret contract terms according to their plain, ordinary meaning."[125] "Contract language is not ambiguous merely because the parties dispute what it means."[126] "To be ambiguous, a disputed contract term must be fairly or reasonably susceptible to more than one meaning."[127] "Delaware courts will not destroy or twist [contract] language under the guise of construing it."[128] "If a writing is plain and clear on its face, *i.e.*, its language conveys an unmistakable meaning, the writing itself is the sole

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[123] *Elliott Assocs., L.P. v. Avatex Corp.*, 715 A.2d 843, 854 (Del. 1998).

[124] *In re Viking Pump, Inc.*, 148 A.3d 633, 648 (Del. 2016) (citations omitted).

[125] *Alta Berkeley VI C.V. v. Omneon, Inc.*, 41 A.3d 381, 385 (Del. 2012) (citations omitted).

[126] *Id.* at 385; *accord Manti Hldgs., LLC v. Authentix Acq. Co., Inc.*, 261 A.3d 1199, 1208 (Del. 2021) ("The parties' steadfast disagreement over interpretation will not, alone, render the contract ambiguous." (internal quotation marks omitted)).

[127] *Alta Berkeley*, 41 A.3d at 385; *see Rhone-Poulenc Basic Chems. Co. v. Am. Motorists Ins. Co.*, 616 A.2d 1192, 1195 (Del. 1992).

[128] *Rhone-Poulenc*, 616 A.2d at 1195.

source for gaining an understanding of intent."[129] This court will enter summary judgment as to a claim for breach of contract when the contract provision at issue is unambiguous and there are no genuine fact disputes requiring a trial.[130]

C. Breach of the Subscription Agreement

The record establishes that the Company breached its obligations under the Subscription Agreement, initially by failing to register the Subscribed Shares and later by failing to make them available for resale under Rule 144. The Company's arguments to the contrary are unavailing. A decree of specific performance will issue requiring that the Company make the Subscribed Shares available for resale.

1. Summary Judgment On The Issue Of Breach

To prevail on a breach of contract claim, the claimant must prove "(i) a contractual obligation, (ii) a breach of that obligation by the defendant, and (iii) a

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[129] *City Inv. Co. Liquid. Tr. v. Cont'l Cas. Co.*, 624 A.2d 1191, 1198 (Del. 1993); *accord E.I. du Pont de Nemours & Co., Inc. v. Shell Oil Co.*, 498 A.2d 1108, 1113 (Del. 1985).

[130] *See, e.g.*, *Jernigan Cap. Operating Co., LLC v. Storage P'rs of KOP, LLC*, 2020 WL 7861334, at *7 (Del. Ch. Dec. 31, 2020) ("When the issue being presented for summary judgment is one of contractual interpretation, summary judgment is appropriate where the dispute centers on the proper interpretation of an unambiguous contract"); *Comet Sys., Inc. S'holders' Agent v. MIVA, Inc.*, 980 A.2d 1024, 1030 (Del. Ch. 2008) ("Summary judgment is an appropriate process for the enforcement of unambiguous contracts because there is no material dispute of fact for the court to resolve."); *Gildor v. Optical Sols., Inc.*, 2006 WL 4782348, at *9 (Del. Ch. June 5, 2006) (granting summary judgment motion when the defendant corporation "breach[ed] a clear provision of the [contract]"); *FT Trading v. Chantal Pharms. Corp.*, 1997 WL 33173288, at *1 (Del. Ch. Sept. 9, 1997) (granting motion for summary judgment for breaching contract when there was "no evidence [] presented that raise[d] a material issue" and there did not "appear to be any ambiguity in the wording of [the] contract").

causally related injury that warrants a remedy, such as damages . . . ."[131] There are no disputes of material fact on the issue of breach. Meteora is entitled to judgment as a matter of law.

The Subscription Agreement obligated the Company to file a registration statement for the Subscribed Shares (the "Registration Obligation"). Under its terms, the Company agreed that

> within thirty calendar days following the Closing Date, the Company will file with the Commission (at the Company's sole cost and expense) a registration statement registering the resale of the Subscribed Shares (the "Registration Statement"), and the Company shall use its commercially reasonable efforts to have the Registration Statement declared effective as soon as practicable after the filing thereof, but in any event no later than ninety calendar days after the Closing Date (the "Effectiveness Deadline"); provided, that the Effectiveness Deadline shall be extended to one hundred twenty calendar days after the Closing Date if the Registration Statement is reviewed by, and comments thereto are provided from, the Commission.[132]

The Closing Date was September 20, 2023, the date the Merger closed.[133] The deadline for filing the Registration Statement for the Subscribed Shares was October 20, 2023. The deadline for obtaining an effective Registration Statement was December 19, 2023. The Company did not file a Registration Statement for the

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[131] *AB Stable VIII LLC v. Maps Hotels and Resorts One LLC*, 2020 WL 7024929, at *47 (Del. Ch. Nov. 30, 2020), *aff'd*, 268 A.3d 198 (Del. 2021).

[132] SA § 5(a).

[133] *See id.* § 2(a).

Subscribed Shares, and the Registration Statement never became effective. The Company therefore breached the Registration Obligation.[134]

The Subscription Agreement separately obligated the Company to take steps to remove any transfer restrictions once the Subject Shares could be sold under Rule 144 (the "Restriction Obligation"). Under its terms, the Company agreed to

> use its commercially reasonable efforts to . . . (B) at the reasonable request of Subscriber, deliver all the necessary documentation to cause the Company's transfer agent to remove all restrictive legends from any Subscribed Shares being sold . . . pursuant to Rule 144 at the time of sale of the Subscribed Shares, or that may be sold by Subscriber without restriction under Rule 144, including without limitation, any volume and manner of sale restrictions, and (C) cause its legal counsel to deliver to the transfer agent the necessary legal opinions required by the transfer agent, if any, in connection with the instruction under clause (B) upon the receipt of Subscriber representation letters and such other customary supporting documentation as requested by (and in a form reasonably acceptable to) such counsel.[135]

On September 26, 2024, the Subscribed Shares became eligible for public resale under Rule 144.[136] On November 6, Meteora asked the Company to confirm that it would instruct its transfer agent to remove any restrictions on the Subscribed Shares. The Company has not submitted any evidence indicating that it made any effort to deliver the documentation necessary to cause its transfer agent to remove any restrictive

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[134] As discussed above, the Time-Based Registration Requirement in the Forward Agreement required that the Company secure an effective Form S-1 within 90 days after August 25, 2023, or by November 23, 2023. The Company breached that obligation as well.

[135] SA § 5(b).

[136] 17 C.F.R. § 240.144.

legends from the Subscribed Shares. The Company therefore breached the Restriction Obligation as well.

The Company argues in response that the Subscription Agreement and the Forward Agreement impose conflicting obligations to register the shares. The Company relies on *McAnulla Electrical*, where the Delaware Superior Court denied summary judgment because of the "apparently conflicting provisions."[137] Here, the provisions do not conflict. They impose serial obligations that the Company had to meet.

The Company also suggest that Meteora's request for registration did not trigger the Restriction Obligation because Meteora sent it by email. Under the Subscription Agreement, email is sufficient.[138]

The Company further argues that the Master Agreement provides for a 30-day cure period and the Forward Agreement incorporates its terms by reference.[139] The

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[137] *McAnulla Elect. Const., Inc. v. Radius Techs., LLC*, 2010 WL 3792129, at *5, *8 (Del. Super. Sept. 24, 2010).

[138] *See* SA § 8(a) ("Any notice, request, demand, claim, or other communication hereunder shall be deemed duly given . . . when sent by electronic mail, with no mail undeliverable or other rejection notice, on the date of transmission to such recipient, if sent on a Business Day prior to 5:00 p.m. New York City time, or on the Business Day following the date of transmission, if sent on a day that is not a Business Day or after 5:00 p.m. New York City time on a Business Day").

[139] MA § 5(a)(ii)(1) (providing that an "event of default" has occurred upon "[f]ailure by the party to comply with or perform any agreement or obligation . . . to be complied with or performed by the party in accordance with this Agreement if such failure is not remedied within 30 days after notice of such failure is given to the party . . .").

Company asserts that Meteora did not give an opportunity to cure before issuing the Failure Notice. For starters, Meteora claims a breach of the Subscription Agreement, not the Forward Agreement. Setting that aside, the Registration Obligation in the Subscription Agreement did not require notice; it was a time-based deadline to file a registration statement by October 20, 2023, and have it declared effective by December 19, 2023. Meteora followed up regarding the registration obligation in May and June 2024. Meteora then waited over a month before issuing the Failure Notice. The Company never made any effort to cure its registration failure. Any cure period is inapplicable.

The same is true for the Restriction Obligation. The Subscribed Shares became eligible for public resale on September 26, 2024. Meteora asked the Company on November 6 to confirm that it would instruct its transfer agent to remove any restrictions on the Subscribed Shares. Two years later, the Company still has not made any effort to cure its breach. Any cure period is again inapplicable.

The Company next argues that Meteora waived its registration right by instructing the Company *not* to file a registration statement. To create a dispute of fact, the Company cites an email exchange in which Meteora stated, "[P]er our understanding [the Company] to date has not issued a registration statement [for the Subscribed Shares] per our instructions and as required under the [Forward]."[140] The Company hangs its hat on "per our instruction," but that phrase does not suggest that

[140] DX G at 54–55.

Meteora instructed the Company not to register the shares. It conveys that Meteora had instructed the Company to register the shares, yet the Company had not done so. The plain language of the email cannot support the Company's interpretation.[141]

The Company also argues that Meteora failed to provide the Company with information to submit to the SEC for registration of the shares. The Company did not ask Meteora for any information until well after the October and December 2023 deadlines had passed. The Company did not request information to facilitate registration until October 2024, when it did so through a generic email rather than a request tailored to Meteora's rights. At that point, Meteora told the Company that registration was no longer necessary and asked the Company to comply with the Restriction Obligation. The Company never complied with that obligation. Any failure to provide information is irrelevant to breach of the Restriction Obligation. The Company's request for information came too late to serve as a defense to its breach of the Registration Obligation.

Summary judgment is therefore granted in Meteora's favor as to the Company's obligations under the Subscription Agreement and the fact of breach.

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[141] Meteora points out that the Subscription Agreement requires a written instrument signed by both parties to waive any rights under the agreement. *See* SA § 8(h). Parties can waive a non-waiver provision, including by conduct. *See Pepsi-Cola Bottling Co. of Asbury Park v. Pepsico, Inc.*, 297 A.2d 28, 33 (Del. 1972) ("The prohibition against amendment except by written change may be waived or modified in the same way in which any other provision of a written agreement may be waived or modified, including a change in the provisions of the written agreement by the course of conduct of the parties."). Because the Company has failed to submit evidence creating a material dispute of fact as to waiver, the court need not reach this issue.

2. The Remedy Of Specific Performance

As a remedy, Meteora seeks a decree of specific performance enforcing the Company's obligation to remove the transfer restrictions on the Subscribed Shares. To obtain that remedy, Meteora must show that it lacks an adequate remedy at law. Meteora also must show that the balance of equities tips in favor of specific performance. The other requirements for a decree of specific performance are not in dispute.

a. An Adequate Remedy At Law

Meteora must show initially that a legal remedy enforcing the Company's obligation to remove the transfer restrictions on the Subscribed Shares would be inadequate. If damages provide an adequate remedy, a court will not order specific performance.[142]

Parties can agree on appropriate remedies, and Delaware courts generally respect their choices, including when they agree on specific performance.[143] That said,

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[142] *26 Cap. Acq. Corp. v. Tiger Resort Asia Ltd.*, 309 A.3d 434, 464 (Del. Ch. 2023).

[143] *Williams Cos., Inc. v. Energy Transfer Equity, L.P.*, 2016 WL 3576682, at *2 (Del. Ch. June 24, 2016), *aff'd*, 159 A.3d 264 (Del. 2017) ("Delaware is strongly contractarian, and the presence of a provision in favor of specific performance in case of breach, as the parties contracted for here, must be respected."); *ATP III GP, Ltd. v. Rigmora Biotech Inv. One LP*, 2025 WL 3496987, at * 27 (Del. Ch. Dec. 5, 2025) ("[A] contractual provision stipulating the parties' preference of specific performance favors granting specific performance."); *L-5 Healthcare P'rs, LLC v. Alphatec Hldgs., Inc.*, 2024 WL 3888696, at *10 n.72 (Del. Ch. Aug. 21, 2024) ("The presence of a specific performance provision, showing the parties' clear intentions, pushes the equities heavily toward enforcing the parties' intentions and expectations as set forth in the [contract]."); *Gildor v. Optical Sols., Inc.*, 2006 WL 4782348, at *11 (Del. Ch. June 5, 2006) ("[I]n the absence of some countervailing public policy interest, courts

a provision calling for specific performance does not bind the court, and a court is not required to enforce it."[144] "Because specific performance is an equitable remedy, its application must be warranted on the facts and consistent with equitable principles."[145] "[S]pecific performance is a matter of grace that rests in the sound discretion of the court."[146] "But when a party has agreed to [a] provision like the Specific Performance Clause, the party must establish a persuasive case-specific why the clause should not be respected."[147] Respecting that type of remedial agreement is all the more warranted when sophisticated parties have bargained for it at arm's length.[148]

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should respect the parties' bargain [for a remedy of specific performance.]"); *see, e.g.*, *Hexion Specialty Chems., Inc. v. Huntsman Corp.*, 965 A.2d 715, 762–63 (Del. Ch. 2008) (enforcing contractual stipulation to specific performance); *see also* 71 Am. Jur. 2d Specific Performance § 11, Westlaw (database updated Aug. 2026).

[144] *Am. Healthcare Admin. Servs., Inc. v. Aizen*, 285 A.3d 461, 495 (Del. Ch. 2022) ("That said, a court is not required to enforce a specific performance provision."); *accord 26 Cap.,* 309 A.3d at 465 ("The existence of such a provision is sufficient to support a decree of specific performance but does not mandate its issuance."); *see Godwin v. Collins*, 3 Del. Ch. 189, 200 (Ch. 1868) ("It is the established rule that a specific performance of a contract of sale is not a matter of course, but rests entirely in the discretion of the court upon a view of all the circumstances." (cleaned up)).

[145] *26 Cap.*, 309 A.3d at 464.

[146] *Peden v. Gray,* 886 A.2d 1278, (Del. 2005) (TABLE).

[147] *Am. Healthcare*, 285 A.3d at 495; *accord Fortis Advisors, LLC v. Krafton, Inc.*, 354 A.3d 906, 948 (Del. Ch. 2026).

[148] *See ATP III GP, Ltd.*, 2025 WL 3496987, at *27 (noting that enforcing a remedial provision is "even more" warranted "when the agreement is between sophisticated [parties] that bargained at arm's length").

Parties also can agree contractually "to the existence of irreparable harm in the event of a party's breach."[149] The parties' agreement is "typically sufficient to demonstrate irreparable harm" and satisfy that requirement.[150] As with a specific performance provision, an irreparable harm provision does not bind the court, so the court can disregard it when irreparable harm plainly does not exist.[151]

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[149] *Martin Marietta Mat'ls, Inc. v. Vulcan Mat'ls Co.*, 56 A.3d 1072, 1145 (Del. Ch. 2012) (footnotes omitted), *aff'd*, 68 A.3d 1208 (Del. 2012).

[150] *Id.*; *see Kan. City S. v. Grupo TMM, S.A.*, 2003 WL 22659332, at *5 (Del. Ch. Nov. 4, 2003) (holding that contractual provision was sufficient to establish irreparable harm); *True N. Commc'ns Inc. v. Publicis S.A.*, 711 A.2d 34, 44 (Del. Ch. 1997) (finding that stipulation of irreparable harm was capable of supporting a preliminary injunction); *Vitalink Pharm. Servs., Inc. v. Grancare, Inc.*, 1997 WL 458494, at *9 (Del. Ch. Aug. 7, 1997) ("[Irreparable harm] is established by [defendant's] stipulation in the Non–Competition Agreement, that ' . . . Vitalink will suffer substantial and irreparable harm in the event [of a breach of the non-competition provision.]' That alone suffices to establish the element of irreparable harm, and [defendant] cannot be heard to contend otherwise."); *SLC Beverages, Inc. v. Burnup & Sims, Inc.*, 1987 WL 16035, at *2 (Del. Ch. Aug. 20, 1987) ("Defendant next claims that plaintiff will not suffer any irreparable harm if a preliminary injunction is not granted. Unfortunately for defendant, this argument is precluded by the Agreement itself which provides that a breach of the Agreement would cause irreparable harm to the non-breaching party and gives the non-breaching party the right to specifically enforce the Agreement.").

[151] *See H.B. Next LLC v. Goodman*, 2025 WL 3174629, at *5 (Del. Ch. Oct. 31, 2025) ("Although this Court will consider contractual stipulations of irreparable harm in connection with exercising its discretion to award injunctive relief, parties do not have the authority to confer subject matter jurisdiction upon this Court through such an agreement . . . . If the facts as pled plainly do not warrant a finding of irreparable harm, this Court is not required to ignore those facts." (cleaned up) (citations omitted)); *S'holder Rep. Servs. LLC v. Renesas Elec. Corp.*, 2024 WL 5192070, at *21 (Del. Ch. Dec. 3, 2024) ("The line of cases considering the effect of a contractual provision establishing irreparable harm notes that such a provision does not require the Court to ignore facts that 'plainly do not warrant a finding of irreparable harm" because 'parties cannot confer subject matter jurisdiction upon a court.' Stated succinctly: 'The existence of such a provision is sufficient to support a decree of specific performance but does not mandate its issuance.'" (citations omitted)); *Del.*

The Subscription Agreement both calls for specific performance as a remedy in the event of breach and provides that a breach gives rise to irreparable harm. It states:

> The parties hereto acknowledge and agree that irreparable damage would occur in the event that any of the provisions of this Subscription Agreement were not performed in accordance with their specific terms or were otherwise breached and that money or other legal remedies would not be an adequate remedy for such damage. It is accordingly agreed that the parties shall be entitled to equitable relief, including in the form of an injunction or injunctions to prevent breaches or threatened breaches of this Subscription Agreement and to enforce specifically the terms and provisions of this Subscription Agreement, this being in addition to any other remedy to which such party is entitled at law, in equity, in contract, in tort or otherwise . . . .[152]

The Company and Meteora are sophisticated parties who were represented by counsel during the negotiation and drafting of the Subscription Agreement. That provision is sufficient to support the existence of irreparable harm and a decree of specific performance. There are also no reasons to disregard the parties' choice. As discussed in the next section, Meteora faces the loss of a unique right that gives rise to irreparable harm and warrants specific performance in any event.

Elevator, Inc. v. Williams, 2011 WL 1005181, at *15 (Del. Ch. Mar. 16, 2011) ("In Delaware, a contractual stipulation to irreparable harm does not force the Court's hand but is sufficient to support injunctive relief."); *Endowment Rsch. Gp., LLC v. Wildcat Venture P'rs, LLC*, 2021 WL 841049, at *8 (Del. Ch. Mar. 5, 2021) ("Delaware courts give some presumptive weight to contractual stipulations of irreparable harm and typically require that a party seeking to avoid the force of the stipulation demonstrate that the facts plainly do not warrant such a finding." (citation omitted)).

[152] SA § 8(k).

b. Balancing The Equities

Despite the presence of a provision calling for specific performance, a court can decline to award that remedy if there are supervening equities or other considerations that warrant its denial.[153] Delaware courts "will only order specific performance where the balance of equities tips in favor of specific performance."[154] When balancing the equities, the court "must be convinced that 'specific enforcement of a validly formed contract would [not] cause even greater harm than it would prevent.'"[155] This factor "reflect[s] the traditional concern of a court of equity that its special processes not be used in a way that unjustifiably increases human suffering."[156]

No countervailing equities exist in this case. As a general rule, the equities "weigh against the breaching party, which only need do what it agreed to do in the first place."[157] That is the case here: The Company breached the Subscription

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[153] *See 26 Cap.*, 309 A.3d at 465 ("Here, after weighing the evidence and balancing multiple considerations, the court exercises its discretion against awarding specific performance.").

[154] *Osborn v. Kemp*, 991 A.2d 1153, 1161 (Del. 2010).

[155] *Global Cap. P'rs LLC v. Green Sapphire Hldgs., Inc.*, 355 A.3d 120, 181 (Del. Ch. 2026) (citing *Hastings Funeral Home, Inc. v. Hastings*, 2022 WL 16921785, at *8 (Del. Ch. Nov. 14, 2022)).

[156] *O'Connor v. Beachy Keen Servs., LLC*, 2025 WL 801165, at *4 (Del. Ch. Mar. 13, 2025 (quoting *Morabito v. Harris*, 2002 WL 550117, at *2 (Del. Ch. Mar. 26, 2002)).

[157] *Global Cap. P'rs*, 355 A.3d at 181; *see also, e.g.*, *Level 4 Yoga, LLC v. CorePower Yoga, LLC*, 2022 WL 601862, at *30 (Del. Ch. Mar. 1, 2022) ("[A]s CorePower breached the APA . . . the balance of equities decidedly favors Level 4.");

Agreement and need only do what it agreed to do. Nor does the obligation Meteora seeks to enforce impose a meaningful burden. The Company can easily comply with its obligations to make the Subscribed Shares available for resale under Rule 144.

By failing to fulfill its obligations, the Company has frustrated a central purpose of the contract. Meteora bargained for the right to sell the Subscribed Shares either under a registration statement or in compliance with Rule 144. Meteora has already lost the ability to sell the Subscribed Shares under a registration statement filed in compliance with the Subscription Agreement. The Company is now preventing Meteora from selling the Subscribed Shares in compliance with Rule 144.

The Subscribed Shares could be sold under Rule 144 starting on September 26, 2024, nearly two years ago. Specific performance therefore will not be a complete remedy, but it will enable Meteora to exercise its sale rights going forward. Meteora has made clear that it will seek damages for the delay.

Without specific performance, Meteora will lose the benefit of its bargain. An award of specific performance simply requires the Company to follow through on what it agreed to. The equities therefore weigh against the Company and in favor of Meteora. The court will enter an order requiring the Company to comply with the Restriction Obligation.

Hastings Funeral Home, 2022 WL 16921785, at *8 ("I find that the equities tip in HFH's favor since it has not breached the Agreement . . . .").

D. Compliance With The Forward Agreement And The Subscription Agreement

Meteora separately seeks a declaratory judgment that it has not breached the terms of the Forward Agreement and the Subscription Agreement. At a minimum, the court can adjudicate the ripe disputes between the parties over Meteora's obligations when selling shares. Meteora is entitled to summary judgment on those issues.

The only dispute between the parties concerns whether Meteora can sell shares freely, without exercising the Early Termination Option or designating the sales as Shortfall Sales. The Company views those options as exclusive. Meteora maintains that it can sell shares by any method it chooses, but that if it sells shares other than through one of those methods, then there is no change in the Number of Shares for purposes of the Settlement Payment.

Under the plain language of the Forward Agreement, the Early Termination Option and Shortfall Sales are not exclusive. The Forward Agreement generally authorizes Meteora to sell shares as it wishes. To that end, the Forward Agreement states:

> [S]ubject to any restrictions set forth in [the Forward Agreement, Meteora] may sell or otherwise transfer, loan or dispose of any of the Shares or any other shares or securities of the [Company] in one or more public or private transactions at any time, ... provided that [Meteora] complies with all of its other obligations hereunder nothing contained herein shall limit any of [Meteora's] purchases and sales of Shares.[158]

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[158] FA at 19, Transactions by Seller in the Shares.

Next, the Forward Agreement implicitly recognizes Meteora's general right to sell by stating: "Unless specified in an [Early Termination] Notice (or Shortfall Sale Notice pursuant to the section entitled Shortfall Sales), no sale of Shares by [Meteora] shall terminate all or any portion of this [Forward Agreement.]"[159] The difference is that exercising the Early Termination Option reduces the Number of Shares. Meteora can otherwise trade freely in the Company's shares (except for engaging in short sales). The only consequence is that other trades do not alter the Number of Shares for purposes of the Settlement Amount.

The Company emphasizes the "subject to any restrictions set forth in this [agreement]" language and argues that the Shortfall Sales and the Early Termination Option are "restrictions" that impose obligations on Meteora when selling. It is true that Meteora must comply with the restrictions on Shortfall Sales and the Early Termination Option when exercising those rights. But the restrictions that apply to those rights do not apply more generally.

The Forward Agreement only imposes two limitations on Meteora's ability to sell. First, Meteora could not submit any SPAC shares for redemption in connection with the Merger.[160] Second, Meteora could not engage in short sales.[161]

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[159] *Id.*

[160] *Id.* ("Seller hereby waives the redemption rights ('Redemption Rights') set forth in the Articles of Association in connection with the Business Combination with respect to the Recycled Shares and the Subscribed Shares only during the term of this Confirmation.").

[161] *Id.* at 12, Short Selling ("Seller represents that with respect to the securities of [the Company], it has not engaged in any Short Sales in respect of the Shares prior

The Company argues that the Early Termination Option requires that Meteora issue an Early Termination Notice whenever it sells shares. The Early Termination Option only applies when Meteora invokes it, and it does not require that Meteora sell shares. Meteora can exercise the Early Termination Option and remove Terminated Shares from the Number of Shares as long as it gives notice to the Company and pays the Company $10.76 per Terminated Share. It is economically rational to Meteora to minimize its risk by selling the Terminated Shares, but Meteora could hedge its market risk in other ways. Meteora could also simply sell shares into the market without issuing an Early Termination Notice and wait until the Cash Settlement Payment Date to pay the Settlement Amount. At that point, Meteora would have to pay the Settlement Price for any shares it sold (other than Terminated Shares) even though Meteora no longer owned them. Meteora thus could owe the Company a Settlement Payment based on more shares than Meteora actually owned on the Cash Settlement Payment Date.[162] The Early Termination Option is

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to the date hereof and covenants that it shall not engage in any such Short Sales in respect of the Shares whatsoever at any time through the Valuation Date. 'Short Sales' means all 'short sales' as defined in Rule 200 promulgated under Regulation SHO under the Exchange Act."); *id.*, at 19, Representations, Warranties and Covenants, ("*__Shorting__*. Seller agrees not to effect any Short Sales in respect of the Shares prior to the earlier of (i) the Valuation Date and (ii) the cancellation of the Transaction. 'Short Sales' means all 'short sales' as defined in Rule 200 promulgated under Regulation SHO under the Exchange Act."). Those provisions carry considerable irony, since the Forward operates as a synthetic long put option that replicates the economics of Meteora shorting the Acquired Shares. The prohibitions do prevent Meteora from double-dipping on the downside by shorting the Acquired Shares *in addition to* its synthetic short exposure.

[162] Even then, for Meteora to net a loss, the value-weighted per share price during the Valuation Period would have to exceed the per share price Meteora

available to Meteora to reduce the Number of Shares. Meteora can also use Shortfall Sales to recover the Prepayment Shortfall. Neither imposes any restriction on Meteora's ability to trade.

The Company's real objection seems to be that the Meteora Transaction is extraordinarily favorable to Meteora. That is true. For the reasons outlined previously, the Meteora Transaction looks like a crazy-good deal for Meteora and a terrible deal for the Company. But "it is not this court's job to relieve sophisticated parties of the burdens of contracts they wish they had drafted differently."[163] "Parties have a right to enter into both good and bad contracts, the law enforces both."[164]

The Company also argues that Meteora's reading of the Forward Agreement is absurd. The Company maintains that the Forward Agreement was intended to facilitate the Company's ability to raise capital so it could grow and expand the business. According to the Company, it cannot be true that Meteora could sell shares and drive down the market price to benefit from a low Settlement Price at the end of a Valuation Period. Driving the market price down would inhibit the Company's ability to raise capital.

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received by enough to offset the cash payment Meteora received at closing plus the Settlement Amount Adjustment. That is extremely unlikely.

[163] *Soleimani v. Hakkak*, 2024 WL 1593923, at *10 (Del. Ch. Apr. 12, 2024), *aff'd*, 327 A.3d 1060 (Del. 2024) (TABLE).

[164] *Nemec v. Shrader*, 991 A.2d 1120, 1126 (Del. 2010).

The Company might have believed the original Forward Agreement was a device for raising capital, but there was only one Panglossian scenario in which that could happen. If Company's stock traded at prices so far above $10.76 per share that the VWAP Price formula triggered at the Valuation Date would generate a Settlement Price above $10.76 as well, even with Meteora engaging in selling and other market activities to drive it down, then the Company could come out ahead. In that scenario, Meteora would exercise the Early Termination Option for all of its shares to capture the upside above $10.76 per share. The Company would capture the delta between $10.76 and the effective price per share the Company paid Meteora based on the cash wired to Meteora after closing.

For purposes of the Meteora Transaction as it actually played out, the Company paid Meteora an effective price of $9.27 per share in the Forward.[165] In the starry-eyed upside case, the Company could capture $1.49 multiplied by the number of Terminated Shares. With 5 million shares, the Company could receive a maximum gain on the Forward of $7.45 million.

Note that the $7.45 million is a true gain. It is not a payment from Meteora that must be netted against the amounts the Company paid immediately after closing to see how the Company fared. But that gain would not arrive until 18 months after the Merger closed. It was also highly unlikely given Meteora's rights under the

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[165] Prepayment of $46,012,517.52 + Expense Reimbursement of $350,842 = $46,363,359.52.

$46,363,359.52. / 5,000,000 = $9.27

Forward Agreement. The original Forward Agreement could not reasonably be viewed as a device to raise capital.

The Forward Amendment, by contrast, was a means for the Company to generate near-term capital. It authorized the Company to make draws of $500,000 each from Meteora, and it enabled Meteora to recapture 117% of each draw through Shortfall Sales. The Forward Amendment provided expensive capital that was highly dilutive to the Company's stockholders, but it was capital. The evidence does not create a dispute of material fact regarding Meteora's compliance with the Forward Amendment.

Given those realities, it is the Company's position, not Meteora's, that could be viewed as absurd. The Company's understanding is so at odds with the Forward Agreement as to suggest that the Company executed the transaction without reading the documents or understanding their implications.

It also suggests naïveté. Meteora specializes in event-driven investments, primarily involving SPACs. Meteora is not a supportive supplier of patient capital, and the Meteora Transaction was never a long-term or strategic investment. Meteora bridged the Minimum Cash Condition in exchange for rights that would turn Gordon Gekko green with envy. Meteora wielded its rights in its own interest to maximize its return, while inferably creating additional positive value for itself through other, related transactions.

The act of contracting is presumptively a cooperative endeavor intended to create and allocate joint surplus.[166] Parties to a contract are not fiduciaries for each other and are therefore free to act in their own interests, but they have nonetheless committed themselves to act together in a joint effort.[167] A legal regime reduces that surplus when it forces parties to be perpetually on their guard against opportunistic actions by their counterparties.[168]

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[166] *See AMPAT/Midwest, Inc. v. Ill. Tool Works Inc.*, 896 F.2d 1035, 1041 (7th Cir. 1990) (Posner, J.) ("The parties to a contract are embarked on a cooperative venture, and a minimum of cooperativeness in the event unforeseen problems arise at the performance stage is required even if not an explicit duty of the contract."); *Contrarian Funds L.L.C. v. Westpoint Int'l, Inc.,* C.A. No. 2617-CC, at 6 (Del. Ch. Nov. 3, 2010) (TRANSCRIPT) ("[C]ontracts are entered into for the benefit of all parties to the contract."); 1 Williston On Contracts, § 1:1 (4th ed. 2023), Westlaw (database updated May 2026) ("Contract law is designed to protect the expectations of the contracting parties. It is intended to enforce the expectancy interests created by the parties' promises so that they can allocate risks and costs during their bargaining. The goal of contract law is to hold parties to their agreements so that they receive the benefits of their bargains."); Alan Schwartz & Robert E. Scott, *Contract Theory and the Limits of Contract Law*, 113 Yale L.J. 541, 552–54 (2003) ("Bargaining power . . . is exercised in the division of the surplus . . . . Parties jointly choose the contract terms so as to maximize the surplus . . . .").

[167] *ArchKey Intermediate Hldgs. Inc. v. Mona*, 302 A.3d 975, 1005 (Del. Ch. 2023); *see Libeau v. Fox*, 880 A.2d 1049, 1056–57 (Del. Ch. 2005) (alluding to the "wealth-creating and peace-inducing effects of civil contracts"), *aff'd in part, rev'd in part on other grounds*, 892 A.2d 1068 (Del. 2006). See Schwartz & Scott, *supra*, at 544 ("[C]ontract law should facilitate the efforts of contracting parties to maximize the joint gains (the 'contractual surplus') from transactions."); Gerrit De Geest, *N Problems Require N Instruments*, 35 Int'l Rev. L. & Econ. 42, 46 (2013) ("[T]he fundamental goal of contract law [is] to maximize the joint surplus of the parties . . . ."); Jeffrey L. Harrison, *A Case for Loss Sharing*, 56 S. Cal. L. Rev. 573, 594 (1983) ("Partnership law and contract law are both designed to foster the sharing of a jointly created surplus.").

[168] *See Mkt. St. Assocs. Ltd. P'ship v. Frey*, 941 F.2d 588, 594 (7th Cir. 1991) (Posner, J.) ("Before the contract is signed, the parties confront each other with a natural wariness. Neither expects the other to be particularly forthcoming, and

For this reason, as a matter of black-letter law, "[e]very contract imposes upon each party a duty of good faith and fair dealing in its performance and its enforcement."[169] Delaware law likewise recognizes that an implied covenant of good faith and fair dealing "attaches to every contract."[170] That covenant applies even when a party possesses a discretionary right: "A party has wide discretion within which to wield a discretionary right consistent with the parties' understandings from their original bargaining positions. A party obviously can wield a discretionary right to promote contractual goals and create joint surplus. Just as obviously, a party can wield a discretionary contractual right to protect its own interests."[171] "But a party cannot wield a discretionary contractual right like a mafia gangster by using it to inflict harm on the counterparty unless the counterparty does what it wants."[172]

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therefore there is no deception when one is not. Afterwards the situation is different. The parties are now in a cooperative relationship the costs of which will be considerably reduced by a measure of trust."); *id.* at 595 ("The parties want to minimize the costs of performance. To the extent that a doctrine of good faith designed to do this by reducing defensive expenditures is a reasonable measure to this end, interpolating it into the contract advances the parties' joint goal.").

[169] Restatement (Second) of Contracts § 205 (A.L.I. 1981), Westlaw (database updated Oct. 2024).

[170] *Dunlap v. State Farm Fire & Cas. Co.*, 878 A.2d 434, 442 (Del. 2005).

[171] *Guilbeau v. Footprint Int'l Holdco, Inc.*, 358 A.3d 248, 279–80 (Del. Ch. 2026).

[172] *Calumet Cap. P'rs LLC v. Victory Park Cap. Advisors, LLC*, 35 A.3d 88, 131 (Del. Ch. 2026).

Some contracts, however, are zero sum. The implied covenant still applies to those contracts (and to be clear, the implied covenant is not at issue in this motion), but the nature of the contract matters for purposes of a party's reasonable expectations.

Through the Transaction Agreements, the Company entered into a zero-sum relationship with Meteora. A frog must account for a scorpion's character, particularly when the frog has sophisticated lawyers and the scorpion lays out what it can do in detailed agreements.

The Company cannot escape the Forward Agreement's clear and unambiguous terms by claiming that the outcome is absurd. Impressively one-sided, yes. Absurd, no. Meteora is entitled to a declaratory judgment that it did not breach the Forward Agreement by selling shares by means other than Shortfall Sales or the Early Termination Option.

III. CONCLUSION

Meteora's motion for summary judgment is granted. The Company breached the Subscription Agreement by failing to register the Subscribed Shares or make them available for resale under Rule 144. Meteora is entitled to a decree of specific performance directing the Company to make the Subscribed Shares available for resale under Rule 144. Meteora did not breach the Forward Agreement by selling shares outside of a Shortfall Sale or the Early Termination Option.