

IN THE COURT OF CHANCERY OF THE STATE OF DELAWARE

ACON IGLOO HOLDINGS, LLC,	)	
	)	
Plaintiff/Counterclaim	)	
Defendant,	)	
	)	
v.	)	C.A. No. 2022-1057-LWW
	)	
DOMETIC CORPORATION,	)	
	)	
Defendant/Counterclaim	)	
Plaintiff.	)	

MEMORANDUM OPINION

Date Submitted: June 12, 2026
Date Decided: September 30, 2026

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WILL, Vice Chancellor

This post-trial decision resolves an earnout dispute. It arises from Dometic Corporation's October 2021 acquisition of cooler manufacturer Igloo Acquisition Holdings Corporation from an affiliate of ACON Investments LLC—a middle-market private equity firm. The purchase price included a contingent payment that ACON and Igloo leadership, including Igloo CEO David Allen, would receive if Igloo generated at least \$75.25 million in EBITDA by year-end 2022. The parties' stock purchase agreement required Dometic to ensure Igloo would be operated in the ordinary course, consistent with its past practices under ACON, and under Allen's leadership. It also prohibited Dometic from taking action with the intent to avoid or reduce the earnout payment.

As 2022 progressed, it became clear that Igloo was falling short of the target. With the historically slow fourth quarter underway, Allen—in consultation with ACON and its lawyers—presented Dometic with a binary choice between strategies he titled “Deliver Earnout” and “Optimize Long Term Value.” When Dometic reminded Allen that any short-term measures to achieve the earnout had to remain consistent with Igloo's past practices, ACON and Allen shut down typical discounts in a tactical effort to force a renegotiation. When that plan failed, they turned their focus to litigation.

ACON did not meet its burden of proving that Dometic breached the ordinary course or no-avoidance covenants in the purchase agreement. Dometic acted

consistently with the contract, and Allen’s “Deliver Earnout” plan was not in the ordinary course.

Dometic also failed to prove its counterclaims for tortious interference with confidentiality agreements and trade secret misappropriation. Although the record reflects troubling disclosures of information to ACON by Allen (and, to a lesser degree, by Igloo’s CFO), Dometic proved no resulting injury on its tortious interference claim. Nor did Dometic establish that the presentations on which it based its trade-secret claim contained protectable trade secrets.

Ultimately, both sides lose.

I. BACKGROUND

Unless otherwise noted, the following facts were stipulated to by the parties or proven by a preponderance of the evidence at trial.¹

A. ACON Acquires Igloo

ACON Investments is a middle-market private equity firm specializing in consumer products, business services, and industrials.² Its general practice is to

¹ See Am. Joint Pre-trial Stipulation (Dkt. 244) (“PTO”). Trial occurred over three days, during which five fact witnesses and two expert witnesses testified live and one fact witness appeared by deposition. See Trial Trs. Vols. I-III (Dkts. 255-57). Trial testimony is cited as “[Name] Tr. ___.” The trial record contains 737 joint exhibits and 18 deposition transcripts. Exhibits are cited by the numbers provided on the parties’ joint exhibit list as “JX ___,” unless otherwise defined. See Joint Ex. List (Dkt. 254). Deposition transcripts are cited as “[Name] Dep. ___.”

² Brotman Tr. 6-7; PTO ¶ 5.

purchase a controlling stake in private companies, grow the enterprise value, and exit at a profit.³ Its investment professionals sit on portfolio company boards and guide strategy, delegating day-to-day management to officers and employees.⁴

In 2014, ACON Investments acquired Igloo Acquisition Holdings Corporation (“Igloo”), a holding company that owned the Igloo brand and cooler business through subsidiaries.⁵ ACON Investments formed ACON Igloo Holdings, LLC (“ACON”), a Delaware limited liability company, to effectuate the purchase.⁶

In 2018, ACON hired David Allen, an industry veteran with experience in the consumer and outdoor products sectors, to serve as Igloo’s Chief Executive Officer.⁷ Allen embraced a management philosophy of “cut[ting] costs, build[ing] brands, and develop[ing] people.”⁸ He recruited additional senior leadership, including Robert Peak to serve as Chief Financial Officer.⁹

³ Brotman Tr. 6-8.

⁴ *Id.* at 10.

⁵ PTO ¶¶ 8, 17.

⁶ *Id.* ¶¶ 5, 8.

⁷ *Id.* ¶ 9; Brotman Tr. 12.

⁸ Peak Tr. 352.

⁹ Brotman Tr. 12.

B. Igloo Under ACON

Igloo is a “seasonal business” that sets prices based on its “gross margin structure.”¹⁰ Its cooler business picks up at the start of spring, “peaks in the summer months, and . . . tails off in the fall.”¹¹ To prepare for peak season, Igloo begins manufacturing coolers in September of the prior year.¹²

Igloo set its annual budget in the fourth quarter of the prior fiscal year.¹³ The budget established financial targets, including gross sales and earnings before interest, taxes, depreciation, and amortization (“EBITDA”).¹⁴ ACON was ultimately responsible for approving the final budget.¹⁵ Throughout the year, ACON monitored Igloo’s financial performance and maintained oversight of its executive team.¹⁶

¹⁰ Allen Tr. 94-95, 96.

¹¹ *Id.* at 94.

¹² *Id.* at 95.

¹³ *Id.* at 93; Brotman Tr. 13-14.

¹⁴ Peak Tr. 352-53, 357.

¹⁵ Brotman Tr. 13.

¹⁶ Allen Tr. 93-94; Brotman Tr. 13-14 (“I believe . . . we had quarterly board meetings, we had monthly reviews of operations, and then lots of ad hoc interim conversations or emails when things came up.”).

ACON empowered Igloo to set prices consistently with its budget and adjust them amid market fluctuations.¹⁷ When Igloo fell behind its projections, ACON gave executive leadership wide latitude to implement “levers” to put the company back on track, including price changes, sales campaigns, and cost reductions.¹⁸ Igloo did not need ACON’s approval before executing these levers because ACON was not “equipped to opine on” operational issues.¹⁹ ACON’s approval was required only for major capital expenditures, such as “upgrading the facilities.”²⁰

ACON’s stated goal was to maximize EBITDA.²¹ And Igloo aimed to meet or exceed its budgeted EBITDA.²² In 2019, Igloo obtained a year-end EBITDA of roughly \$35 million.²³ In 2020, its EBITDA was approximately \$39.3 million.²⁴ And in 2021, Igloo obtained an EBITDA of roughly \$31 million.²⁵

¹⁷ Allen Tr. 93-94, 97-99 (describing the effects of the COVID-19 pandemic and a “heavy freeze in and around the Texas area” on resin prices); Peak Tr. 357.

¹⁸ Brotman Tr. 16; *id.* at 29-30, 51-52; Allen Tr. 96-102, 121.

¹⁹ Brotman Tr. 8, 16 (“We are not business owners or operators. We invest.”).

²⁰ Allen Tr. 94.

²¹ Brotman Tr. 23, 84-85.

²² Peak Tr. 352-53 (“When we would set a budget, the goal was to hit the budget or exceed the budget from an EBITDA perspective.”); Allen Tr. 94.

²³ Ratner Tr. 706.

²⁴ Kulkarni Tr. 621-22; JX 23.

²⁵ Ratner Tr. 706.

C. Dometic Acquires Igloo

In 2021, Dometic Corporation identified Igloo as a potential acquisition target.²⁶ Dometic is a U.S. subsidiary of Dometic Group AB, a Swedish public company.²⁷ Its mission is to “implement strict norms and efficient processes to ensure that all operations create long-term value for shareholders and other stakeholders.”²⁸

Dometic Group is led by Juan Vargues, who has served as its Chief Executive Officer since 2018.²⁹ Under Vargues’s leadership, Dometic has completed twelve acquisitions, ten of which included an earnout component.³⁰ Until now, Dometic had never been involved in earnout litigation.³¹

On September 17, 2021, ACON agreed to sell its ownership interest in Igloo to Dometic pursuant to a Stock Purchase Agreement (the “Purchase Agreement”) for consideration of up to \$900 million.³² The purchase price included a \$677 million cash payment at closing, the potential for additional payments in post-closing

²⁶ Vargues Dep. 93-94.

²⁷ PTO ¶ 12.

²⁸ JX 121 at 69.

²⁹ Vargues Tr. 488; PTO ¶ 13.

³⁰ Vargues Tr. 488-89.

³¹ *Id.* at 490.

³² PTO ¶ 24; Brotman Tr. 17; JX 64 (“Purchase Agreement”).

adjustments, and contingent earnout payments of up to \$223 million.³³ If Igloo achieved the earnout, Allen and Peak stood to personally benefit: Allen a maximum of \$15.77 million, and Peak \$2.31 million.³⁴

D. The Purchase Agreement

The earnout was contingent on Igloo's achievement of EBITDA targets between December 25, 2021 and December 31, 2022.³⁵ If Igloo's aggregate EBITDA during the earnout period was less than \$75.25 million, no earnout payment was owed.³⁶ If Igloo achieved the \$75.25 million threshold, ACON was entitled to a \$75.5 million payment.³⁷ The amount owed to ACON increased incrementally for each dollar of EBITDA over this minimum base target, capped at a maximum payment of \$223 million if EBITDA exceeded \$86.20 million.³⁸

The earnout structure created conflicting incentives. ACON and Igloo management were incentivized to maximize short-term EBITDA to ensure payment of the earnout.³⁹ Dometic sought to maximize long-term stockholder value.⁴⁰ To

³³ Purchase Agreement § 1.8; *id.* at Ex. A-3; *see* Brotman Tr. 17; PTO ¶ 25.

³⁴ PTO ¶¶ 27, 29; JX 76; JX 77.

³⁵ Purchase Agreement § 1.8; PTO ¶ 1.

³⁶ Purchase Agreement § 1.8(a)(i).

³⁷ *Id.* § 1.8(a)(i); *id.* at Ex. A-6.

³⁸ Purchase Agreement § 1.8(a)(ii); *id.* at Exs. A-1, A-6.

³⁹ Brotman Tr. 7-8, 32.

⁴⁰ *Id.* at 44.

manage this risk, the parties agreed to certain restrictions on Dometic’s authority to run Igloo’s business during the earnout period.

Dometic’s “discretion with regard to all matters relating to the operation of” Igloo was limited by a covenant that Allen would have “reasonable authority to run the daily operations” of Igloo.⁴¹ Igloo would be operated “in the ordinary course of business and consistent with past practices.”⁴² Dometic agreed to “provide support as [wa]s reasonably necessary” for Allen to operate Igloo “consistent with the manner” it had been run before closing.⁴³ Dometic also agreed not to take any action “with the intent of reducing the EBITDA” of Igloo “or otherwise avoiding or reducing” the earnout payment.⁴⁴

Alongside the Purchase Agreement, Allen and Peak entered into Confidentiality and Employment Agreements with Dometic (the “Confidentiality Agreements”).⁴⁵ The Confidentiality Agreements barred Allen and Peak from disclosing “Confidential Information” about Igloo’s businesses.⁴⁶

⁴¹ Purchase Agreement § 1.8(c)(i).

⁴² *Id.*

⁴³ *Id.* § 1.8(c)(ii).

⁴⁴ *Id.* § 1.8(c)(vi).

⁴⁵ JX 78; JX 79.

⁴⁶ JX 78 § 6(b); JX 79 § 6(b).

E. Igloo's Performance in Late 2021 to Mid-2022

In the fourth quarter of 2021, Igloo presented its 2022 budget to Dometic. Due to “dramatic swings in [Igloo’s] input costs and the continuing impact of COVID,” Igloo presented three budget scenarios.⁴⁷ The “Most Likely” scenario forecast gross sales of \$585.6 million and EBITDA of \$75 million.⁴⁸ Igloo relied upon this scenario to set its budget target at \$75 million in EBITDA.⁴⁹ It noted a “medium probability” that lower sales volume and higher resin and freight costs might cause it to miss this mark.⁵⁰

In the first quarter of 2022, external market forces disrupted Igloo’s projections. Russia invaded Ukraine, which increased oil prices.⁵¹ As a result, the index for composite resin—a key material used to make Igloo coolers—spiked from \$0.90 to \$1.05.⁵² These resin prices exceeded Igloo’s initial projections.⁵³

Freight costs also skyrocketed. Igloo’s budget assumed freight costs of \$11,000 per container, but the index rose to \$15,800 by March 2022.⁵⁴ In response,

⁴⁷ PTO ¶ 30; JX 81.

⁴⁸ JX 81.

⁴⁹ PTO ¶ 30.

⁵⁰ Peak Tr. 426-48.

⁵¹ Allen Tr. 113.

⁵² *Id.*

⁵³ JX 81 at 5.

⁵⁴ JX 2001 at 1.

Igloo management elected to raise prices mid-March, but the increases would not take effect for 60 to 90 days.⁵⁵ Consequently, Igloo fell behind its targets for the first half of the year.⁵⁶ In June 2022, Igloo reported that its year-to-date gross sales were \$19 million lower than budget and EBITDA was \$13 million lower than budget.⁵⁷

F. Igloo’s Performance in the Third Quarter of 2022

On July 13, 2022, Igloo’s senior leadership team met to discuss the earnout.⁵⁸ Management circulated an “Earnout Update” presentation revealing that net sales were 6% below budget and EBITDA was 28% below target.⁵⁹ The presentation directed employees to “[s]ubmit three actions that [their] team [would] take to drive \$75.25M+ EBITDA” to Allen and Peak by July 15.⁶⁰

Allen and Peak consolidated the resulting proposals in a document called “Path to \$75M.”⁶¹ According to Allen, Igloo’s “biggest value driver” would require resolving “open pricing discrepancies.”⁶²

⁵⁵ See JX 116; JX 140; Allen Tr. 113; Militello Tr. 323.

⁵⁶ Peak Tr. 372.

⁵⁷ JX 170 at 9.

⁵⁸ JX 169 at 1-2.

⁵⁹ *Id.* at 3.

⁶⁰ *Id.* at 7.

⁶¹ JX 180; JX 181; JX 182.

⁶² JX 174.

On August 8, both Allen and Peak submitted official notice of their intent to leave Igloo.⁶³ The notice was given 150 days in advance, under the terms of their employment agreements with Dometic.⁶⁴

Meanwhile, the ACON team was exploring ways to hit the \$75.25 million EBITDA target as it grew increasingly unlikely. For example, it contemplated purchasing—then giving away—\$20 million worth of Igloo coolers in August 2022.⁶⁵ It discussed whether Igloo could execute a sale-leaseback transaction relating to its facilities in Katy, Texas.⁶⁶

By October 2022, third-quarter financials confirmed that Igloo missed its gross sales and EBITDA targets.⁶⁷ Peak informed Allen that hitting the earnout required a \$22 million fourth-quarter EBITDA—far exceeding the initially budgeted \$8.5 million.⁶⁸ Despite this deficit, Igloo management continued to forecast fourth-quarter EBITDA between \$20.1 and \$21.7 million to the Dometic board.⁶⁹

⁶³ JX 189; JX 190.

⁶⁴ JX 189; JX 190.

⁶⁵ JX 191; Brotman Tr. 27-28.

⁶⁶ JX 183; JX 187; JX 209.

⁶⁷ JX 268 at 1, 10.

⁶⁸ *Id.* at 1.

⁶⁹ JX 2002 (September 20 presentation) 16; JX 288 (October 11 presentation) 20; Allen Tr. 231-32 (explaining that he did not tell Dometic's board that Igloo was tens of millions behind the sales and EBITDA targets in its preexisting budget).

Internally, however, Allen acknowledged on October 11 that Igloo “still ha[d] about \$25M of sales to identify in Q4.”⁷⁰ On October 17, management reported its third-quarter miss and forecasted a year-end EBITDA of \$64.1 million, absent \$30 to \$40 million of additional fourth-quarter sales.⁷¹

G. Plan D

Facing a significant deficit after the prior three quarters, Allen formed a new strategy to boost EBITDA in the fourth quarter. Doing so was no small task. The fourth quarter was “historically [Igloo’s] lowest EBITDA and sales quarter,” given the seasonal nature of its business.⁷²

On October 19, Allen sent a text message to Suma Kulkarni, a managing partner of ACON Investments.⁷³ He wrote: “Alright, I have a new idea (Plan D). Let’s touch base in the morning if you’re free.”⁷⁴ ACON’s founding partner, Ken Brotman, described Plan D as “a continuing attempt” to “reach a commercial settlement” with Dometic regarding the earnout.⁷⁵ Allen executed on the plan the following day.

⁷⁰ JX 289 at 1; *see also* JX 156.

⁷¹ JX 294 at 15; Allen Tr. 216-17.

⁷² JX 2012; Peak Tr. 455 (quoting JX 2012).

⁷³ JX 299 at 2 (text message from Allen to “Mommy bb” (Kulkarni)); *see* PTO ¶ 7.

⁷⁴ JX 299 at 2.

⁷⁵ Brotman Tr. 48; *see* PTO ¶ 6.

On October 20, Vargues met with Allen and other members of Igloo management at Igloo's headquarters in Texas.⁷⁶ He was exploring a transition plan given Allen's and Peak's upcoming departures. During a closed-door meeting, Allen told Vargues that he intended to pursue a plan to sell off excess and obsolete inventory and "pull forward a price decrease" during the fourth quarter to reach the earnout target.⁷⁷ If Vargues was unsupportive of the plan, Allen said that Vargues would need to renegotiate the earnout with ACON.⁷⁸ Allen's plan amounted to two options: boost sales for the fourth quarter to deliver the earnout, or concentrate on long-term growth but not hit the earnout target.⁷⁹ Vargues asked Allen to prepare materials summarizing the two scenarios.⁸⁰

Later that day, Peak sent Vargues a slide deck titled "2022-2023 Scenarios," which modeled the financial effects of the two options Allen had raised.⁸¹ The scenarios were titled "Deliver Earnout" and "Optimize Long Term Value."⁸² Under the "Deliver Earnout" scenario, Igloo would achieve an EBITDA of \$77.9 million

⁷⁶ PTO ¶ 34.

⁷⁷ Allen Tr. 138-39; *see* Vargues Tr. 503.

⁷⁸ Allen Tr. 138-39 ("And told him if he didn't want to do either of those actions, then that was between he and ACON if he wanted to go and negotiate that."); Vargues Tr. 502-06.

⁷⁹ Vargues Tr. 503-04.

⁸⁰ Allen Tr. 139.

⁸¹ JX 315; Allen Tr. 139.

⁸² JX 315.

in 2022 but comparatively lower EBITDA in the first and second quarters of 2023.⁸³ Under the “Optimize Long Term Value” scenario, Igloo would achieve an EBITDA of \$65.1 million in 2022 but maintain “sequential quarterly [EBITDA] growth” through the end of 2023.⁸⁴

Allen then forwarded the scenarios he “shared with Juan” to Kulkarni and Brotman.⁸⁵

H. Vargues Emails Allen

On October 22, Vargues emailed Allen regarding the “2022-2023 Scenarios.”⁸⁶ He wrote:

We consider the development of the Igloo business and the value creation for all the stakeholders long term as very important. The company business shall be conducted in the ordinary course of business consistent with the past practices and we do not see reasons to take any short term measures deviating from that.⁸⁷

⁸³ *Id.* at 3. Mike Avery, Igloo’s VP of Finance, created the deck. He modeled a scenario in which Igloo increased fourth quarter sales volume by decreasing price. Avery Dep. 202-03.

⁸⁴ JX 315 at 2.

⁸⁵ JX 303.

⁸⁶ JX 316.

⁸⁷ *Id.*

Allen responded later that day, writing: “[U]nderstood. We will continue to operate the business in the ordinary course.”⁸⁸ Allen also forwarded the exchange to Brotman, Kulkarni, and ACON’s counsel at King & Spalding LLP.⁸⁹

Vargues lacked the information needed to assess the two scenarios and grew concerned that Allen and ACON were driving to renegotiate the earnout.⁹⁰ He contacted Josh Militello—Igloo’s then-Senior Vice President of Sales—to discuss the scenarios.⁹¹ Vargues asked Militello whether it made sense for Igloo’s long-term positioning to decrease prices to deliver the earnout.⁹² Militello told Vargues that, if it were up to Militello, Igloo would not take the price decreases because it would be an anomaly that would impair long-term value creation.⁹³ In prior years, Igloo had not offered the sort of incentives and pricing reductions to drive revenue and hit its budget during the fourth quarter that Allen was contemplating.⁹⁴

⁸⁸ JX 320.

⁸⁹ JX 321.

⁹⁰ Vargues Tr. 505-06.

⁹¹ *Id.* at 506-07; Militello Tr. 332.

⁹² Militello Tr. 332.

⁹³ *Id.* at 332-33 (“I told him if I was in his seat, then his best bet for the long-term value of Dometic was to not take a price decrease.”); Vargues Tr. 507.

⁹⁴ Militello Tr. 327-28.

The next day, Vargues emailed Allen and Peak to express his preference for maintaining the company's past practices.⁹⁵ He expressed that he interpreted the 2022-2023 Scenarios deck as an intention to "implement extraordinary measures . . . in contradiction with the principles of the operating model for Igloo agreed [to] in the [Purchase Agreement]." ⁹⁶ Vargues "reiterate[d]" what Peak and Allen "already kn[e]w and what should be [their] guiding principle for running the company during the earn out period, namely that [they] and the Igloo management team shall conduct the company business in the ordinary course of business consistent with past practices."⁹⁷ He closed by stating: "*Any short term measures contradicting this principle must be approved by [Dometic]*, and we want by this email [to] make it very clear: we do not approve any short term[] actions, such as customer campaigns with discounted prices."⁹⁸

Once again, Allen forwarded Vargues's email to ACON.⁹⁹ Kulkarni responded that it was "[n]ot good," and that they needed to "come up with a plan that gets to negotiate and get to a win win."¹⁰⁰ Allen suggested that they be "more

⁹⁵ JX 326; Vargues Tr. 509-510; Allen Tr. 150-51.

⁹⁶ JX 326.

⁹⁷ *Id.* (emphasis removed).

⁹⁸ *Id.* (emphasis added).

⁹⁹ *Id.*; JX 325 ("Just sent you the latest response from Dometic.").

¹⁰⁰ JX 325.

aggressive” in responding that Dometic was “trying to limit [their] ability to deliver the earnout.”¹⁰¹

On October 23, Allen asked Brotman and Kulkarni to “get aligned before” speaking with King & Spalding.¹⁰² Throughout the day, they had calls and exchanged emails with King & Spalding about how to respond to Vargues.¹⁰³ Brotman proposed that Allen write: “Past practice has always included the fundamental objective of maximizing revenues and EBITDA for current periods and that is what we continue to do”¹⁰⁴ Brotman knew that Igloo had not, however, previously maximized revenue for an earlier quarter to the detriment of a later quarter.¹⁰⁵

That afternoon, Allen wrote to Vargues that he would “continue to operate the business in the ordinary course of business.”¹⁰⁶ He disavowed any “plan to implement ‘extraordinary measures’” and confirmed that his plans were “completely consistent with past practices.”¹⁰⁷ Allen also expressed that he had “the authority to

¹⁰¹ *Id.*

¹⁰² JX 333 at 2.

¹⁰³ JXs 330-44.

¹⁰⁴ JX 330.

¹⁰⁵ Brotman Tr. 85-86; Brotman Dep. 180. Brotman was impeached on this issue at trial.

¹⁰⁶ JX 346.

¹⁰⁷ *Id.*

operate the business in the ordinary course” without being “micromanage[d]” by Dometic.¹⁰⁸

I. The Airport Phone Call

Allen was scheduled to fly to Bentonville, Arkansas on October 24 to present a sales pitch to Walmart—Igloo’s largest customer.¹⁰⁹ To prepare for the pitch, Igloo management had drafted a proposal offering Walmart a 10% cost concession in exchange for accepting a minimum of \$14 million in incremental shipments.¹¹⁰ Igloo had not previously offered these types of incentives in the fourth quarter.¹¹¹

While at the airport, Allen joined a Microsoft Teams call with Peak, Vargues, and Stefan Fristedt (Dometic’s Chief Financial Officer).¹¹² Fristedt recorded the call.¹¹³ Allen explained that he was “jumping on the plane to go meet with [Igloo’s] largest customer” to “get rid of what is over 110 percent increase in inventory.”¹¹⁴

Fristedt asked Allen about the 2022-2023 scenarios deck—specifically, why Allen had presented Dometic with the choice to either allow Igloo to satisfy the

¹⁰⁸ *Id.*

¹⁰⁹ Allen Tr. 179; Peak Tr. 484; JX 313.

¹¹⁰ JX 313.

¹¹¹ Militello Dep. 167; *see also id.* at 262-64; JX 375.

¹¹² JX 348 (native).

¹¹³ JX 2009; Fristedt Tr. 611-12.

¹¹⁴ JX 2009 at 4.

earnout or generate long-term value.¹¹⁵ Allen responded that short-term discounting was necessary to monetize inventory because they were “sitting on 110 percent more inventory” and “have to continue to pre-build coolers” for the summer months.¹¹⁶

Vargues was wary of Allen’s shift in plan, and mentioned that two weeks earlier, Allen had told him “minor concessions” only were planned, which were “pretty different” from Allen’s new proposal.¹¹⁷ Allen was unwavering, and said that he did not need Dometic’s “permission” for price concessions.¹¹⁸ Vargues was also suspicious that Allen had even raised a pricing issue with Dometic, since he had never done so before.¹¹⁹

After more back-and-forth, Allen stated that he and Vargues would “agree to disagree.”¹²⁰ The call ended. Although Vargues never told Allen to stand down or cancel his meeting, Allen abruptly left the airport and cancelled his trip to Bentonville.¹²¹

¹¹⁵ *Id.* at 4.

¹¹⁶ *Id.* at 6.

¹¹⁷ *Id.* at 7.

¹¹⁸ *Id.* at 7-8.

¹¹⁹ *Id.* at 9-10.

¹²⁰ *Id.* at 11.

¹²¹ Allen Tr. 180-81.

That afternoon, Allen wrote to Vargues to “follow up” on their Teams call.¹²² He stated that Vargues had “reiterated [his] direction from [his] prior email” that Dometic “d[id] not approve any short term[] actions, such as customer campaigns with discounted prices.”¹²³ “As a result,” Allen said, Igloo would “not offer Walmart or any [other] customers excess inventory at reduced prices or give any price concessions for the balance of the year.”¹²⁴ He noted that this move would “adversely affect [Igloo’s] revenue, EBITDA and working capital for Q4.”¹²⁵

Vargues was puzzled by this email, since he had not given any such direction during the Teams call.¹²⁶ He asked Allen why, in the course of one month, he had “adjusted the outlook for Q4 2022 three times.”¹²⁷ Vargues pointed out specific figures and observed that, “[w]hen looking back on the quarterly patterns[,] it [wa]s hard to understand that the latest outlook for Q4 2022 [Allen was] suggesting would have anything to do with past practices.”¹²⁸ He emphasized that Dometic had not,

¹²² JX 381.

¹²³ *Id.*

¹²⁴ *Id.*

¹²⁵ *Id.*

¹²⁶ Vargues Tr. 515-16; *see* JX 2009.

¹²⁷ JX 381.

¹²⁸ *Id.*

at any point, given the Igloo team instructions adversely affecting Igloo's financial results but had required Igloo to operate "in the ordinary course."¹²⁹

Allen then directed Militello to suspend discount programs for numerous clients.¹³⁰

J. ACON's Litigation Preparations

With Plan D having failed, ACON turned its focus to litigation.

On October 25, Brotman asked Allen to call him before Allen spoke "to lawyers."¹³¹ Brotman asked Allen to move correspondence to his "personal email."¹³² Allen forwarded emails to Brotman and Kulkarni about a request Dometic had not yet approved and Igloo's inventory, prior sales programs, and financial information.¹³³ He did so to "support the earnout conversation discussions [they] were having."¹³⁴

The next day, on October 26, Allen and Kulkarni exchanged text messages about a draft notice that Dometic had breached the Purchase Agreement.¹³⁵ Allen

¹²⁹ *Id.*

¹³⁰ JX 379.

¹³¹ JX 357.

¹³² *Id.*

¹³³ JX 356; JX 358; JX 359; JX 366; *see* Allen Tr. 291-94.

¹³⁴ Allen Tr. 293.

¹³⁵ *See* JX 375; Allen Tr. 296.

provided input on King & Spalding's draft.¹³⁶ Allen commented: "[W]e can't say that we ran a similar program last year in Q4 because we didn't have future price increases to leverage."¹³⁷ He also suggested that he could "shut down all promotions/discounts" at Igloo, acknowledging that it would "hurt [Igloo] even further" but "[t]hat may be the point."¹³⁸

King & Spalding transmitted a Notice of Breach to Dometic's counsel on October 27, stating that Dometic was in violation of the Purchase Agreement.¹³⁹ The letter stated that Dometic had "overruled Mr. Allen's decisions on issues that fall within the purview of the management team," causing "material harm to [Igloo's] business" and "a significant detrimental effect on [Igloo's] 2022 EBITDA."¹⁴⁰ On October 31, counsel for Dometic sent a response letter denying the accusations.¹⁴¹

On November 6, Allen participated in a call with ACON, King & Spalding, and the Aegis Law Group (which ACON had retained to represent Allen).¹⁴² The purpose of the call was to gather more factual information in preparation for filing

¹³⁶ JX 375 (Allen: "Overall, a massive improvement from the original draft.").

¹³⁷ *Id.*; Allen Tr. 297.

¹³⁸ JX 375.

¹³⁹ JX 2004.

¹⁴⁰ *Id.*

¹⁴¹ JX 384; *see also* JX 408.

¹⁴² JX 392.

the present action.¹⁴³ In the coming weeks, Allen provided additional information to assist in drafting the complaint.¹⁴⁴

The specter of litigation was designed to encourage Dometic to recut the deal. As ACON's counsel noted: "[Allen] will drop the bomb, we then send the letter" attempting to renegotiate the earnout, "and the field is set for a discussion."¹⁴⁵

Dometic declined to renegotiate the earnout.

K. Disclosures to ACON and BBI

During the fourth quarter, Peak and Allen transmitted Igloo proprietary documents to ACON.

On November 18, Peak sent a slide deck titled "SKU and Customer EBITDA" to Kulkarni.¹⁴⁶ The slide deck contained charts and graphs pertaining to Igloo's sales, customer- and product-specific EBITDA, and SKU proliferation.¹⁴⁷ The next morning, Kulkarni forwarded Peak's email and the presentation to Beauty By

¹⁴³ *Id.*; JX 395.

¹⁴⁴ *See* JX 398; JX 400; JX 401; JX 403; JX 417; JX 418.

¹⁴⁵ JX 404 at 5; Kulkarni Tr. 671.

¹⁴⁶ JX 1001.

¹⁴⁷ *Id.*; Peak Tr. 354.

Imagination (“BBI”), an ACON portfolio company.¹⁴⁸ She then forwarded a second, similar Igloo presentation to BBI.¹⁴⁹

On November 28, Kulkarni asked Allen for a copy of Igloo’s “current org chart.”¹⁵⁰ Allen sent back several charts documenting Igloo’s organizational structure.¹⁵¹ They were marked “CONFIDENTIAL,” indicating that “[t]he[] documents contain information which is confidential and proprietary to Igloo Products Corp.”¹⁵²

On November 30, Peak forwarded a Dometic presentation to another ACON employee.¹⁵³ “Exactly what we need at BBI,” the ACON employee responded.¹⁵⁴ One week later, Peak emailed a BBI employee a presentation called “Igloo Strategic Plan,” which was labeled “Confidential and Proprietary.”¹⁵⁵ Both emails were sent from Peak’s personal email address.¹⁵⁶

¹⁴⁸ Peak Tr. 354; JX 1001 at 1.

¹⁴⁹ JX 1002.

¹⁵⁰ JX 433.

¹⁵¹ *Id.*

¹⁵² JX 433. Allen sent additional spreadsheets with detailed financial information on January 19, 2023. JX 480. He also transmitted proprietary business decisions, such as why Igloo had not executed certain “cost savings rebates,” to Kulkarni. JX 487; JX 488.

¹⁵³ JX 438; JX 439.

¹⁵⁴ JX 438; JX 439.

¹⁵⁵ JX 447.

¹⁵⁶ JX 438; JX 439; JX 447.

L. This Litigation

ACON filed this lawsuit on November 18, 2022, advancing claims for breach of the Purchase Agreement and of the implied covenant of good faith and fair dealing against Dometic.¹⁵⁷ Dometic brought several counterclaims, some of which I dismissed under Rule 12(b)(6).¹⁵⁸ The remaining counterclaims are for tortious interference with contract and misappropriation of trade secrets under the District of Columbia Uniform Trade Secrets Act.

A three-day trial took place on March 11-13, 2026.¹⁵⁹ Post-trial briefing was complete as of June 8, 2026.¹⁶⁰ A post-trial argument was held on June 12, 2026, after which the matter was submitted for decision.¹⁶¹

II. ANALYSIS

ACON claims that Dometic breached its contractual obligations and the implied covenant of good faith and fair dealing by interfering with Igloo's ability to operate in the ordinary course during the earnout period. It seeks money damages

¹⁵⁷ Dkt. 1. ACON filed an amended and supplemented complaint on February 12, 2025. Dkt. 211. The claims remained fundamentally the same. *Id.*

¹⁵⁸ Dkts. 74, 144, 147.

¹⁵⁹ Dkt. 251.

¹⁶⁰ *See* Pl.'s Opening Post-trial Br. (Dkt. 259); Def.'s Post-trial Answering Br. (Dkt. 262); Pl.'s Post-trial Reply Br. (Dkt. 263); Def.'s Post-trial Reply Br. (Dkt. 264).

¹⁶¹ Dkt. 267.

plus pre- and post-judgment interest.¹⁶² Dometic claims that ACON tortiously interfered with Allen's and Peak's Confidentiality Agreements in seeking confidential information, and that ACON misappropriated Igloo's trade secrets by obtaining certain presentations containing purportedly proprietary information. It likewise seeks money damages and pre- and post-judgment interest.¹⁶³

The proponents bear the burden of proving their claims by a preponderance of the evidence. "Proof by a preponderance of the evidence means proof that something is more likely than not."¹⁶⁴ Under this standard, "certain evidence, when compared to the evidence opposed to it, has the more convincing force and makes [the court] believe that something is more likely true than not."¹⁶⁵

Neither party met its burden of proof at trial on any claims.

A. Whether Dometic Breached the Purchase Agreement

ACON claims that Dometic breached earnout-related covenants in Section 1.8(c) of the Purchase Agreement.¹⁶⁶ To prevail on its breach of contract claim, ACON must prove the existence of a contract, a breach of an obligation imposed by

¹⁶² PTO § IV.A ¶ 54.

¹⁶³ *Id.* § IV.B ¶ 55.

¹⁶⁴ *Agilent Techs., Inc. v. Kirkland*, 2010 WL 610725, at *13 (Del. Ch. Feb. 18, 2010) (quoting *Del. Express Shuttle, Inc. v. Older*, 2002 WL 31458243, at *17 (Del. Ch. Oct. 23, 2002)).

¹⁶⁵ *Id.*

¹⁶⁶ Pl.'s Opening Post-trial Br. 41-47.

that contract, and resulting damages.¹⁶⁷ The parties agree that the Purchase Agreement is valid and binding.¹⁶⁸ My analysis therefore hinges on the second element: whether Dometic breached it.

This inquiry is guided by settled principles of contract interpretation.¹⁶⁹ “Delaware law adheres to the objective theory of contracts,” meaning that “a contract’s construction should be that which would be understood by an objective, reasonable third party.”¹⁷⁰ Where a contract is unambiguous, the court gives effect to the “plain meaning of the contract’s terms and provisions.”¹⁷¹ It must assess the contract “as a whole and . . . give each provision and term effect, so as not to render any part of the contract mere surplusage.”¹⁷²

ACON claims that Dometic breached two sets of earnout-related covenants in the Purchase Agreement. The first set defined Allen’s authority to operate Igloo in the ordinary course of business and required Dometic to provide him support to do

¹⁶⁷ See *VLIW Tech., LLC v. Hewlett-Packard Co.*, 840 A.2d 606, 612 (Del. 2003).

¹⁶⁸ PTO ¶ 24.

¹⁶⁹ See Purchase Agreement § 10.9 (selecting Delaware law to govern “matters of validity, construction, effect, performance and remedies”).

¹⁷⁰ *Salamone v. Gorman*, 106 A.3d 354, 367-68 (Del. 2014) (quoting *Osborn ex rel. Osborn v. Kemp*, 991 A.2d 1153, 1159 (Del. 2010)).

¹⁷¹ *Osborn ex rel. Osborn v. Kemp*, 991 A.2d 1153, 1159-60 (Del. 2010); see also *Rhone-Poulenc Basic Chems. Co. v. Am. Motorists Ins.*, 616 A.2d 1192, 1195 (Del. 1992) (“Clear and unambiguous language . . . should be given its ordinary and usual meaning.”).

¹⁷² *Osborn*, 991 A.2d at 1159 (quoting *Kuhn Constr., Inc. v. Diamond State Port Corp.*, 990 A.2d 393, 396-97 (Del. 2010)).

so (the “Ordinary Course Covenant”).¹⁷³ The second prohibited Dometic from acting with the intent to avoid or reduce the earnout payment (the “No-Avoidance Covenant”).¹⁷⁴ In ACON’s view, these covenants were intended to “freeze time,” preserving Allen’s reasonable authority and Igloo’s ability to operate in the ordinary course while prohibiting Dometic from working to deprive it of the earnout.¹⁷⁵ ACON asserts that Dometic breached these covenants by “overruling” Igloo’s Q4 2022 plan and by “direct[ing] Allen not to implement the short-term actions Igloo management had identified to achieve Igloo’s financial targets.”¹⁷⁶ ACON failed to prove a breach of either covenant.

1. The Ordinary Course Covenant

Section 1.8(c) of the Purchase Agreement provides, in relevant part:

During the Earn-Out Period, [Dometic] shall have discretion with regard to all matters relating to the operation of [Igloo], provided that:

(i) [Dometic] shall procure that David Allen will have reasonable authority to run the daily operations of [Igloo] and shall conduct the business of [Igloo] *in the ordinary course of business and consistent with past practices* of [ACON] (subject to [Dometic’s] code of conduct and other policies). David Allen

¹⁷³ Purchase Agreement § 1.8(c)(i)-(ii).

¹⁷⁴ *Id.* § 1.8(c)(vi). ACON raised other allegedly breached covenants before trial but opted not to press them in post-trial briefing. Those arguments are waived. *See Emerald P’rs v. Berlin*, 726 A.2d 1215, 1224 (Del. 1999) (“Issues not briefed are deemed waived.”).

¹⁷⁵ Pl.’s Opening Post-trial Br. 41.

¹⁷⁶ *Id.*

will have reasonable authority to adjust [Igloo's] expenses in good faith after reasonable consultation with [Dometic].

(ii) [Dometic] shall, in reasonable consultation with David Allen, provide support as is *reasonably necessary to [Igloo] consistent with the manner in which the business of [Igloo] has been conducted prior to the Closing*.¹⁷⁷

“Ordinary course” conduct means conduct undertaken “in the regular course of events.”¹⁷⁸ The Purchase Agreement ties this standard to ACON’s “past practices” in “conduct[ing]” Igloo’s business.¹⁷⁹ Delaware courts have observed that a covenant to operate “in the ordinary course of business and consistent with” past practices “imposes an unconditional obligation.”¹⁸⁰ Here, those operations were also made subject to Dometic’s code of conduct and policies.¹⁸¹

ACON asserts that, under its past practices, Igloo set an annual budget with EBITDA targets, monitored performance, and, when needed, implemented plans to bring performance back in line with those targets.¹⁸² ACON describes this practice as “empower[ing]” Igloo management to operate the business and pursue budget

¹⁷⁷ Purchase Agreement § 1.8(c)(i)-(ii) (emphasis added).

¹⁷⁸ *AB Stable VIII LLC v. Maps Hotels & Resorts One LLC*, 268 A.3d 198, 210 (Del. 2021).

¹⁷⁹ Purchase Agreement § 1.8(c)(i).

¹⁸⁰ *Cooper Tire & Rubber Co. v. Apollo (Mauritius) Hldgs. Pvt. Ltd.*, 2014 WL 5654305, at *15 (Del. Ch. Oct. 31, 2014).

¹⁸¹ Purchase Agreement § 1.8(c)(i).

¹⁸² Pl.’s Opening Post-trial Br. 42.

results, including through pricing and other financial levers.¹⁸³ In ACON's view, Allen and his team did just that: "planning, forecasting, identifying levers, and preparing to execute year-end actions to deliver budget" in mid- to late 2022.¹⁸⁴ "Had ACON owned Igloo," it maintains, it would have supported those efforts and sought to maximize EBITDA.¹⁸⁵

ACON claims that Dometic breached the Ordinary Course Covenant by prohibiting Allen and his team from following through on their plans. It argues that "Vargues requested the details of Allen's financial plan, considered the impact of the plan on Dometic's interest in long-term value creation for its public company investors, and then shut down the plan and any short-term actions to manage Igloo's financial results in Q4" 2022.¹⁸⁶ Vargues purportedly did so through a "directive" that "forbade the short-term actions that Igloo would have taken in the ordinary course to hit its budget."¹⁸⁷ ACON failed to prove that Dometic did anything of the sort.

¹⁸³ *Id.* at 42-43.

¹⁸⁴ *Id.* at 43.

¹⁸⁵ *Id.* at 44.

¹⁸⁶ *Id.*

¹⁸⁷ *Id.*

To show that Dometic breached the Ordinary Course Covenant, ACON focuses on Vargues’s October 23 email to Allen.¹⁸⁸ ACON contends that the email barred Allen from taking any “short term actions” including “customer campaigns with discounted prices.”¹⁸⁹ “After the email,” Allen was allegedly deprived of “reasonable authority to run the daily operations . . . consistent with the past practices of ACON” because his “team was not permitted to move forward with its planned sales programs and other short-term actions to achieve its EBITDA [t]arget.”¹⁹⁰

ACON’s reliance on this email is misplaced.

First, ACON ignores the context in which Vargues sent the email. At the time, Allen had threatened to either pursue the earnout at the expense of long-term value or pursue long-term value while expecting Dometic to renegotiate the earnout.¹⁹¹ This “Plan D,” which Allen devised with ACON as a means of pressuring Dometic to recut the earnout when Igloo underperformed, was far from the ordinary course. After Militello told Vargues that Allen’s plan was not in the ordinary course, Vargues reminded Allen of his operational boundaries.¹⁹²

¹⁸⁸ *Id.* at 45.

¹⁸⁹ *Id.* (quoting JX 328 at 1); *see* Vargues Tr. 547-48.

¹⁹⁰ Pl.’s Opening Post-trial Br. 45 (citing Allen Tr. 175, 181-82; Peak Tr. 409).

¹⁹¹ *See supra* Section I.G.

¹⁹² *See* Militello Dep. 177; Vargues Tr. 537-38, 546-48; JX 316.

ACON also selectively quotes from the email. The key portion of Vargues's message states:

We can only reiterate here what you already know and what should be your guiding principle for running the company during the earn out period, namely that you and the Igloo management team shall conduct the company business in the ordinary course of business consistent with the past practices.

Any short term measures contradicting this principle must be approved by us, and we want by this email make it very clear: we do not approve any short terms actions, such as customer campaigns with discounted prices, as you indicated to me during our conversation in Katy last week.¹⁹³

This email was not a bar on Allen's authority to operate Igloo consistently with its past practices before the acquisition. Vargues merely reminded Allen and Peak that the Purchase Agreement required Igloo's business to be conducted during the earnout period "in the ordinary course of business consistent with past practices."¹⁹⁴ He further advised them that any short-term measures contradicting the principle stated in the previous sentence (i.e., measures that were not in the ordinary course of business and consistent with past practice) must be approved by Dometic.¹⁹⁵

¹⁹³ JX 327 at 1 (bold in original; italics added for emphasis).

¹⁹⁴ Purchase Agreement § 1.8(c)(i); *see* Vargues Tr. 508-11, 518-20.

¹⁹⁵ Vargues Tr. 557 (testifying credibly that the email reminded Allen of the "guiding principles of operating in the ordinary course of business").

The trial record demonstrates that Allen’s proposed measures were not ordinary course actions consistent with past practices. They were last-ditch efforts coordinated with ACON and its counsel to either achieve the earnout through unusual pricing and sales strategies or force a renegotiation. The very titles of Allen’s scenarios—“Deliver Earnout” and “Optimize Long Term Value”—make that plain.¹⁹⁶

In the second quarter, Igloo was well behind its targets, even though that quarter traditionally accounted for 30% to 40% of its annual revenue.¹⁹⁷ A “substantial gap after Q2 mean[t] that it[] [would be] very, very difficult to recover in Q3 and Q4.”¹⁹⁸ Igloo did not offer price deferrals in the fourth quarter of 2021; it first offered them at the beginning of 2022.¹⁹⁹ ACON introduced no proof that Igloo had previously offered incentives in the fourth quarter to drive revenue and hit its year-end budget while under its ownership.²⁰⁰

¹⁹⁶ JX 315.

¹⁹⁷ Vargues Tr. 495-96.

¹⁹⁸ *Id.*

¹⁹⁹ Allen Tr. 104, 176; Militello Tr. 323-24 (confirming that Igloo never gave price deferrals in the fourth quarter of 2021 but gave them at the beginning of 2022).

²⁰⁰ Militello Dep. 167, 262-64 (Q: “Had Igloo ever offered other types of incentives in Q4 to drive revenue and hit budget?” A: “We had had conversations around offering incentives in the past but had not executed on any.”).

Allen’s reaction during the October 24 Teams call, as he prepared to fly to Bentonville, does not suggest otherwise. During the call, Allen admitted that Igloo had missed its third-quarter sales and EBITDA targets and rolled them into the fourth quarter forecast.²⁰¹ He reiterated that Igloo management would run the business as planned unless Dometic had “a separate conversation” with ACON.²⁰² Although ACON argues that Vargues “shut down Igloo’s plans” during this call,²⁰³ the transcript belies that narrative.²⁰⁴ Allen chose to leave the airport, abandon his meeting with Walmart, and cancel other incentives. As he later told ACON, “shut[ting] down promotions/discounts” would “hurt [Igloo],” but that “may be the point.”²⁰⁵

Accordingly, ACON failed to prove a breach of the Ordinary Course Covenant.

2. The No-Avoidance Covenant

The No-Avoidance Covenant cabined Dometic’s discretion “with regard to all matters relating to” Igloo’s operations.²⁰⁶ It barred Dometic from taking “any action,

²⁰¹ JX 348 (native); JX 2009 at 2.

²⁰² JX 348 (native); JX 2009 at 9.

²⁰³ Pl.’s Opening Post-trial Br. 28.

²⁰⁴ JX 2009.

²⁰⁵ JX 375 at 3.

²⁰⁶ Purchase Agreement § 1.8(c).

directly or indirectly, with the intent of reducing the EBITDA, profitability, revenues, customer retention or employee retention of [Igloo] or otherwise avoiding or reducing the Earn Out Payments.”²⁰⁷ “Intent in the legal sense is purpose to use particular means to effect a certain result.”²⁰⁸ ACON asserts that the evidence shows that after “Vargues received projections demonstrating that management’s Q4 plan would deliver the Earn-Out EBITDA,” he “escalated immediately” to “shut down Igloo’s business” and avoid the payment.²⁰⁹

To prove this breach, ACON points to Vargues’s “routing the [2022-2023 Scenarios presentation] to Dometic’s CFO and legal team, confirming the magnitude of Dometic’s [earnout] exposure, and then issuing a categorical veto of Igloo’s plans to hit the [earnout]” by sending the October 23 email.²¹⁰ As discussed, the October 23 email was not a “veto.”²¹¹ Nor did Vargues act to thwart the earnout by forwarding Allen’s scenarios to his colleagues at Dometic and considering Dometic’s potential exposure.

²⁰⁷ *Id.* § 1.8(c)(vi).

²⁰⁸ *Lazard Tech. P’rs, LLC v. Qinetiq N. Am. Operations LLC*, 114 A.3d 193, 195 n.8 (Del. 2015) (quoting *Coverdale v. State*, 531 A.2d 1235 (Del. 1987)); *see also S’holder Rep. Servs. LLC v. Albertsons Cos.*, 2021 WL 2311455, at *6 (Del. Ch. June 7, 2021) (finding allegations sufficient to support an inference of intent to avoid an earnout).

²⁰⁹ Pl.’s Opening Post-trial Br. 46.

²¹⁰ *Id.*

²¹¹ *See supra* Section II.A.1.

The evidence shows that Allen presented his “Deliver Earnout” plan to pressure Dometic into renegotiating the terms of the earnout.²¹² The facts ACON identifies are consistent with Dometic taking steps to evaluate whether to engage in such negotiations. These facts also are consistent with Dometic evaluating whether Allen’s “Deliver Earnout” plan violated the Purchase Agreement. ACON therefore failed to prove a breach of the No-Avoidance Covenant.

B. Whether Dometic Breached the Implied Covenant

Pleading in the alternative, ACON claims that Dometic’s same conduct breached the implied covenant of good faith and fair dealing by “depriving ACON of the fruits of its Earn-Out bargain.”²¹³ “The implied covenant of good faith and fair dealing inheres in every contract and ensures that neither party acts arbitrarily or unreasonably to frustrate the fruits of their bargain.”²¹⁴ The implied covenant is a limited and extraordinary remedy that operates in two primary ways. The first is “when a contract allocates discretionary authority to one party over a central aspect of the contract” and “the party exploits that discretion in a manner that defeats the ‘overarching purpose’ of the bargain.”²¹⁵ The second is “to address unforeseen

²¹² See *supra* Section I.G.

²¹³ Pl.’s Opening Post-trial Br. 48.

²¹⁴ *Johnson & Johnson v. Fortis Advisors LLC*, 352 A.3d 229, 253 (Del. 2026).

²¹⁵ *Id.* at 253 (quoting *Dunlap v. State Farm Fire & Cas. Co.*, 878 A.2d 434, 442 (Del. 2005)).

developments—contingencies neither anticipated nor resolved by the contract—that threaten the parties’ bargained-for economic expectations.”²¹⁶

ACON invokes the first scenario, citing Dometic’s “discretion” over Igloo’s operations, which was made subject to the Ordinary Course and No-Avoidance Covenants.²¹⁷ It contends that the implied covenant prohibited Dometic from “taking affirmative steps to impede [Igloo’s] ability to generate revenue.”²¹⁸ Dometic purportedly breached the implied covenant by unreasonably exercising its discretion in a manner that prevented Igloo from achieving sufficient EBITDA.²¹⁹

The express terms of the Purchase Agreement govern the parties’ conduct, precluding ACON’s implied covenant claim. “[T]he implied covenant ‘does not apply when the contract addresses the conduct at issue,’ but only ‘when the contract is truly silent’ concerning the matter at hand.”²²⁰ Here, the Purchase Agreement grants Dometic discretion to operate Igloo subject to explicit bargained-for

²¹⁶ *Id.* at 254.

²¹⁷ Pl.’s Opening Post-trial Br. 49-50 (citing Purchase Agreement § 1.8(c)).

²¹⁸ *Id.* at 48-49 (citing *Am. Cap. Acq. P’rs, LLC v. LPL Hldgs., Inc.*, 2014 WL 354496, at *6-7 (Del. Ch. Feb. 3, 2014)); *see also id.* (arguing that Dometic was required to afford Igloo “a fair opportunity to operate the company in such a fashion as to maximize the earn-out consideration” (citing *O’Tool v. Genmar Hldgs., Inc.*, 387 F.3d 1188, 1197 (10th Cir. 2004))).

²¹⁹ *Id.* at 49-50.

²²⁰ *Oxbow Carbon & Mins. Hldgs., Inc. v. Crestview-Oxbow Acq., LLC*, 202 A.3d 482, 507 (Del. 2019) (citation omitted); *see also Glaxo Gp. Ltd. v. DRIT LP*, 248 A.3d 911, 920 (Del. 2021) (explaining that the implied covenant “cannot be invoked when the contract addresses the conduct at issue”).

limitations on that discretion.²²¹ Namely, the No-Avoidance Covenant prohibited Dometic from acting “with the intent of reducing the EBITDA, profitability, revenues, customer retention or employee retention of the Group Companies or otherwise avoiding or reducing the Earn-Out Payments.”²²² “The implied covenant has no room to operate where a contract grants discretion to one party and then limits that discretion with an ‘intent’ qualifier” because “[t]hat bargained-for contractual dynamic removes the need for the implied covenant.”²²³

ACON’s implied covenant claim is therefore legally deficient. Regardless, ACON failed to prove a breach of any implied term for the reasons discussed above.²²⁴

C. Whether ACON Tortiously Interfered with Contracts

Although little trial time was spent on its counterclaims, Dometic asserts that ACON tortiously interfered with Allen’s and Peak’s Confidentiality Agreements.²²⁵

²²¹ Purchase Agreement § 1.8(c).

²²² *Id.* § 1.8(c)(vi).

²²³ *Albertsons*, 2021 WL 2311455, at *2 (Del. Ch. June 7, 2021); *see also Reardon v. CANarchy Holdco Corp.*, 2021 WL 2287468, at *3 (Del. Super. June 4, 2021) (rejecting an implied covenant claim where the obligation was expressly stated in the purchase agreement and prohibited the buyer from “intentionally tak[ing] any action with the intent of reducing the Earnout Amount”).

²²⁴ *See supra* Section II.A.2.

²²⁵ Def.’s Post-trial Answering Br. 71-77. ACON argues that Dometic waived and abandoned its counterclaims by neglecting to offer live fact or expert testimony at trial. *See* Pl.’s Post-trial Reply Br. 49-51. Dometic responds that it pursued its counterclaims under paragraph 73 of the Joint Pre-trial Order, which permits a party to rely on deposition

To prevail on a claim for tortious interference with contract, Dometic must show that “(1) there was a contract, (2) about which the particular defendant knew, (3) an intentional act that was a significant factor in causing the breach of contract, (4) the act was without justification, and (5) it caused injury.”²²⁶ When analyzing these elements, Delaware courts are guided by the Restatement (Second) of Torts.²²⁷

The existence of the Confidentiality Agreements and ACON’s knowledge of them are undisputed.²²⁸ The agreements prohibited Allen and Peak from disclosing “Confidential Information,” defined as:

[A]ny knowledge or information about . . . the business, activities and facilities of [Igloo and/or Dometic], including business plans, budgets, financial information, methods, processes, research data, marketing and sales strategies, plans and information, the sources, costs and pricing of [Igloo’s and/or Dometic’s] products, the identity and needs of [Igloo’s and/or Dometic’s] customers and potential customers, [and] personnel data²²⁹

testimony as though the witness were present and testifying at trial. *See* Def.’s Post-trial Reply Br. 4-6; PTO ¶ 73. Although I do not deem the counterclaims abandoned, Dometic pursued them with little zeal. They fail on the merits in any event.

²²⁶ *WaveDivision Hldgs., LLC v. Highland Cap. Mgmt., L.P.*, 49 A.3d 1168, 1174 (Del. 2012).

²²⁷ *ASDI, Inc. v. Beard Rsch., Inc.*, 11 A.3d 749, 751 (Del. 2010); *Grunstein v. Silva*, 2009 WL 4698541, at *16 (Del. Ch. Dec. 8, 2009).

²²⁸ *See* JX 71; JX 78; JX 79.

²²⁹ JX 78 at 4; JX 79 at 4.

Dometic contends that ACON acted intentionally by requesting confidential information from Allen and Peak outside Section 1.8(d) of the Purchase Agreement.²³⁰

Allen provided ACON with confidential information about Igloo’s finances and business strategies during and after the earnout period. For example, at Kulkarni’s request, Allen sent a copy of Igloo’s “current org chart”—a document stating on its face that it “contain[ed] information which is confidential and proprietary to Igloo Products Corp.”²³¹ Worse, in a January 19, 2023 text thread, Allen sent Kulkarni Igloo spreadsheets containing detailed financial information, including weekly KPI metrics and detailed sales and budget information broken down by customer.²³² This information meets the definition of “Confidential Information” in the Confidentiality Agreement.²³³ ACON attempted to hide Allen’s

²³⁰ Def.’s Answering Post-trial Br. 72; *see* Purchase Agreement § 1.8(d) (“Buyer shall, on a monthly basis during the Earn-Out Period, (1) deliver to Seller the financial and accounting records of the Group Companies to permit Seller to perform accurate and independent calculations of cumulative EBITDA as of the end of the then most recent calendar month, and (2) provide Seller with reasonable access to management to discuss the financial performance of the Group Companies.”).

²³¹ JX 433.

²³² *See* JX 480.

²³³ *See supra* note 229 and accompanying text.

disclosures from both Igloo and Dometic, including by asking Allen to shift communications to his personal email address.²³⁴

The allegations regarding Peak are less troubling. Peak sent Kulkarni materials, at her request, that she could forward to BBI—an ACON portfolio company in the haircare industry.²³⁵ As Kulkarni credibly testified at trial, she sent the presentations to BBI to show what “really good analysis” looked like in a presentation.²³⁶ It was her intent “to be able to share best practices” across ACON’s portfolio companies.²³⁷ This was far from best practice. But Dometic did not prove that it constituted tortious interference.

Even if Dometic could prove these actions were unjustified and outside ACON’s information rights under Section 1.8(d) of the Purchase Agreement, it has not proven an injury.²³⁸ “Resulting injury is a necessary element of a tortious interference with contract claim.”²³⁹ To satisfy this element, a plaintiff must demonstrate an injury to its “economic interest in the performance of a contract”

²³⁴ See, e.g., JX 357 at 2 (Brotman writing to Allen in a text “Let’s move to your personal email for our emailing.”); JX 431 at 2 (Brotman writing to Allen “Sorry, meant to send to your personal email,” to which Allen responds, “All good. I just responded from my personal email. Let me know if you need any additional info.”); see Allen Tr. 291.

²³⁵ Kulkarni Tr. 623.

²³⁶ *Id.*

²³⁷ *Id.* at 624.

²³⁸ See Pl.’s Post-trial Reply Br. 51-52.

²³⁹ *Sorrento Therapeutics, Inc. v. Mack*, 2023 WL 5670689, at *23 (Del. Ch. Sept. 1, 2023).

such that the interference deprived the plaintiff of its “rightful expectations of performance.”²⁴⁰ Speculative harm is insufficient; “actual damage and loss must have been occasioned by the wrong.”²⁴¹

Vargues, testifying as Dometic’s Rule 30(b)(6) witness, admitted that he was unaware of any losses suffered by Dometic other than attorneys’ fees, and Dometic offered no trial testimony or admissible expert evidence to contradict that concession.²⁴² Delaware courts will not, however, permit “impermissible fee-shifting under the guise of a tort claim for damages.”²⁴³ Under the American Rule, each party bears its own legal fees in the absence of a recognized exception, such as a fee-shifting provision.²⁴⁴ Dometic identifies none.

Dometic does not contend that BBI was a competitor of Igloo or that BBI relied on the documents to obtain any competitive advantage.²⁴⁵ Instead, Dometic

²⁴⁰ *NACCO Indus., Inc. v. Applicia Inc.*, 997 A.2d 1, 33-35 (Del. Ch. 2009) (quoting *Shearin v. E.F. Hutton Gp., Inc.*, 652 A.2d 578, 589 (Del. Ch. 1994)); see also *WaveDivision*, 49 A.3d at 1174 (requiring proof that the unjustified act “caused injury”).

²⁴¹ *Cooper’s Home Furnishing v. Rittenhouse Inv. Assocs., Inc.*, 1977 WL 9542, at *5 (Del. Ch. Nov. 1, 1977).

²⁴² Vargues Dep. 74.

²⁴³ *Ross Sys. Corp. v. Ross*, 1994 WL 89015, at *4 n.5 (Del. Ch. Feb. 15, 1994).

²⁴⁴ See, e.g., *Mahani v. Edix Media Gp., Inc.*, 935 A.2d 242, 245 (Del. 2007).

²⁴⁵ Vargues Dep. 55-56; Kulkarni Tr. 623 (explaining that BBI is a “hair care platform,” which makes “brushes, hair accessories, wet products like shampoo, conditioners, and heat styling tools”).

puts forward an “avoided-cost” theory of damages.²⁴⁶ Dometic asserts that ACON was enriched by \$45,000 because it avoided the design and production costs of preparing a similar presentation for BBI.²⁴⁷ The record shows that ACON had received substantially similar presentations from Igloo before the transaction with Dometic.²⁴⁸ In light of that prior access, Dometic failed to prove that receiving the later presentations enabled ACON to avoid the claimed \$45,000 in design and production costs.

D. Whether ACON Misappropriated Trade Secrets

Finally, Dometic claims that ACON misappropriated purported trade secrets—internal financial and accounting records, and related presentations—in violation of the District of Columbia Uniform Trade Secrets Act (“DCUTSA”).²⁴⁹ To prevail on a claim for trade secret misappropriation under the DCUTSA, Dometic must show: “(1) the existence of a trade secret; and (2) acquisition of the trade secret

²⁴⁶ See JX 709 (Expert Report of Phillip J. Innes) (identifying a February 2021 “SKU and Customer EBITDA” presentation and a March 2022 “SKU and Customer EBITDA” presentation as the sole sources of damages for tortious interference); JX 1002; JX 1001.

²⁴⁷ Def.’s Post-trial Answering Br. 83 (citing JX 709 at 17).

²⁴⁸ See, e.g., JX 15 at 1-2.

²⁴⁹ Def.’s Post-trial Answering Br. 84-88.

by improper means, or improper use or disclosure by one under a duty not to disclose.”²⁵⁰

The first element is dispositive. The DCUTSA defines a “trade secret” as “information, including a formula, pattern, compilation, program, device, method, technique, or process,” that “[d]erives actual or potential independent economic value, from not being generally known to, and not being readily ascertainable by, proper means by another who can obtain economic value from its disclosure or use” and “[i]s the subject of reasonable efforts to maintain its secrecy.”²⁵¹ “Information that is ‘generally known or readily ascertainable to the public’ . . . or ‘generally known within an industry’ . . . cannot constitute a trade secret.”²⁵²

Dometic identified “internal financial and accounting records and related presentations” as the purportedly misappropriated trade secrets.²⁵³ It focuses on the two “SKU and Customer EBITDA” presentations that Peak transmitted to ACON

²⁵⁰ *Econ. Rsch. Servs., Inc. v. Resol. Econ., LLC*, 208 F. Supp. 3d 219, 232 (D.D.C. 2016) (summarizing D.C. Code § 36-401, *et seq.*).

²⁵¹ D.C. Code § 36-401(4).

²⁵² *Trilogy Fed., LLC v. CivitasDX LLC*, 2025 WL 436850, at *3 (D.D.C. Feb. 9, 2025) (citing *Catalyst & Chem. Servs., Inc. v. Glob. Gp. Support*, 350 F. Supp. 2d 1, 8-9 (D.D.C. 2004) (citation omitted)).

²⁵³ Def.’s Post-trial Answering Br. 86. Because Dometic failed to address the other purported “trade secrets” alleged in its pre-trial filings, such arguments are waived. *See Emerald P’rs*, 726 A.2d at 1224.

on November 18 and 30, 2022.²⁵⁴ Those presentations included charts and graphs describing Igloo’s sales information, EBITDA, and SKU proliferation from 2018 through 2021.²⁵⁵ But Dometic did not establish that the underlying financial information was not “generally known within [the] industry.”²⁵⁶ The presentations instead reflect standard financial analysis for a consumer products company.²⁵⁷

Dometic’s expert identifies the key information within the presentations as “methodology for determining EBITDA by SKU and the benefits derived from the approach.”²⁵⁸ Dometic did not, however, establish that this methodology as neither generally known nor readily ascertainable by proper means. Peak testified that he had “developed” the same “tool[s]” in his prior role at another company decades earlier.²⁵⁹

Dometic also relies on the “CONFIDENTIAL” marking on the presentations.²⁶⁰ The fact that a document is marked confidential does not, however,

²⁵⁴ Def.’s Post-trial Answering Br. 85 n.276 (identifying JX 1001 and JX 1002 as the presentations at issue).

²⁵⁵ JX 1001; JX 1002.

²⁵⁶ *Econ. Rsch.*, 208 F. Supp. 3d at 232.

²⁵⁷ JX 1001; JX 1002; JX 709 at 14.

²⁵⁸ JX 709 at 14.

²⁵⁹ Peak Dep. 178-80; *see Sarkissian Mason, Inc. v. Enter. Hldgs., Inc.*, 955 F. Supp. 2d 247, 256 (S.D.N.Y. 2013) (explaining that certain information did not constitute a “trade secret because it was easily duplicated”).

²⁶⁰ Def.’s Post-trial Answering Br. 87.

make it a trade secret.²⁶¹ Dometic therefore failed to carry its burden of proving that either the underlying financial information or the analytical methodology constituted a trade secret under the DCUTSA.

III. CONCLUSION

ACON did not carry its burden of proving that Dometic breached the Purchase Agreement or the implied covenant of good faith and fair dealing. Dometic likewise did not carry its burden of proving that ACON tortiously interfered with Allen's and Peak's Confidentiality Agreements or misappropriated a protectable trade secret.

Judgment is entered in Dometic's favor on ACON's claims and in ACON's favor on Dometic's counterclaims. The parties must confer on and file a proposed form of final order implementing this decision within 14 days.

²⁶¹ D.C. Code § 36-401(4)(A) (requiring that the alleged trade secret “[d]erive[] actual or potential independent economic value,” irrespective of designation).