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Case Number 378,2015D

IN THE SUPREME COURT OF THE STATE OF DELAWARE

Sandra Manno and Manno Enterprises LLC,	:	No. 378, 2015D
Defendants and Counterclaim Plaintiffs Below/Appellants,	:	Court Below: Delaware Court of Chancery, (C.A. No. 6429-VCL)
v.	:	
Cancan Development, LLC, Robert A. Granieri, Robert J. Granieri and George Toth,	:	
Plaintiffs and Counterclaim Defendants Below/ Appellees.	:	

APPELLANT MANNO ENTERPRISES LLC's REPLY BRIEF ON APPEAL

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INTRODUCTION AND SUMMARY OF ARGUMENT

Appellees fail to offer convincing responses to Enterprises' key arguments, and in several respects fail to offer any response at all. Appellees' primary tactic is to attempt to sidestep Enterprises' arguments and to rely on the fact that the Court of Chancery issued an opinion, period, without attempting to defend that opinion. This tactic does not succeed. The judgment below should be reversed and judgment should be entered in favor of Enterprises.

Appellees' opposition conspicuously fails to dispute several of Enterprises' most basic points, such as:

- The Court of Chancery failed to apply the correct legal test to determine if CanCan was financially unable to take advantage of the opportunity that RG Junior usurped (Br. 16-17);
- The Court of Chancery's opinion represents a significant break in Delaware's corporate usurpation jurisprudence (Br. at 18);
- The Court of Chancery's opinion encourages directors and parents of subsidiaries to improperly steer corporate opportunities towards their own companies (Br. at 17);
- No suggestion was ever made that CanCan's fortunes – or the value of the Church Property – changed significantly in the months between the $400 million dollar financing proposal and the dissolution (Br. at 11);
- Toth, as co-manager of CanCan, did not represent CanCan's interests during the dissolution and sale, did not require that appraisals be done, and did not direct that an independent committee be consulted (Br. at 26);
- The dilution of Enterprises' interest was designed to be "rough justice" towards separate defendant Sandra Manno (Br. at 34).

The absence of any response to these points is telling, and where Appellees do respond to Enterprises' other arguments, they do so inadequately (e.g., one page on the unfair process of RG Junior's self-interested dissolution and sale).

The Appellees' opposition can be summarized succinctly. First, Appellees offer no challenge to Enterprises' most basic appeal of the Court of Chancery's usurpation ruling: the Court of Chancery failed to apply the correct legal test to determine if CanCan was indeed financially unable to take advantage of the opportunity that Appellees usurped. The proper test for financial inability under *Guth v. Loft, Inc.*, 5 A.2d 503, 511 (Del. 1939) is an insolvency test; the Court of Chancery never applied that test. Nor do Appellees deny that, left undisturbed, the Court's ruling would create a significant break in Delaware's usurpation jurisprudence, and encourage disloyal behavior by directors and corporate parents. The sum total of Appellees' argument of the usurpation claim is to contend that there were factors – not adopted by the Court – that justified the usurpation. Appellees' "it was justified" answer is no answer at all, and fails in light of *Guth* and its progeny.

Second, with regard to the undisputedly self-interested dissolution and sale of CanCan, Appellees glaringly avoid any meaningful attempt to defend the process of the self-interested sale. Appellees offer just one page of legally invalid argument in attempting to defend a self-interested transaction that delivered zero value to the minority stakeholder, and that was undertaken without any independ-

ent appraisal or other checks and balances. Appellees then propose a one-sided and selective approach to evaluating fair price that excludes data points that are unfavorable to Appellees, and go so far as to argue that Enterprises' election not to participate in a capital call means that CanCan lacked value. Delaware law is directly contrary to Appellees' distorted notions of entire fairness. Appellees' strained response reflects the profoundly unfair process and price to which Enterprises was subjected.

Third, and finally, Appellees cannot avoid the fact that the capital calls were (by the Court of Chancery's own determination) indeed "more dilutive" than they should have been. Op. 55. Appellees do not deny or defend the fact that the calls were intended as "rough justice" to be inflicted upon Enterprises as indirect punishment of a separate party, Ms. Sandra Manno. *Id*. at 56. Nor can Appellees offer any legal authority to support the notion that an improper dissolution and sale can somehow immunize a prior, improper dilution.

Appellees' breaches led LHI to build a casino on CanCan's property and on the foundation laid by CanCan and Enterprises. The judgment of the Court of Chancery should be reversed, with judgment entered in favor of Enterprises.

ARGUMENT

I. Enterprises' Appeal of the Usurpation Claim Should Be Sustained

Appellees conspicuously fail to offer any defense to Enterprises' core usurpation arguments. Because Appellees cannot and do not contest the fact that the Court of Chancery applied the wrong legal standard in evaluating the usurpation claim, Enterprises' appeal should be affirmed.

A. This Court Reviews Questions of Law De Novo

Appellees rest much of their opposition on the hope that the Court will apply a deferential standard of review, rather than the *de novo* standard required by law. This Court applies *de novo* review to questions of law. *State Farm Mut. Auto. Ins., Co. v. Davis*, 80 A.3d 628, 632 (Del. 2013). The issue of whether the Court of Chancery applied the correct test for "financial inability" under *Guth* is a question of law. *Id.* Appellees' contention that deferential review applies to the Court of Chancery's legal mistake is incorrect.

B. Guth's First Factor Involves An Insolvency Test

As made clear in Enterprises' Opening Brief – and as unchallenged in Appellees' opposition – the appropriate test for financial inability under *Guth* is an insolvency test. *E.g., Yiannatsis v. Stephanis by Sterianou*, 653 A.2d 275, 279 n.2 (Del. 1995) (courts should consider tests including but not limited to "a balancing standard, temporary insolvency standard, or practical insolvency standard"); *Gen. Video Corp. v. Kertesz*, 2008 Del. Ch. LEXIS 181, at *56-*57 (Del. Ch. Dec. 17,

2008) (describing financial inability as a lack of resources "amount[ing] to insolvency to the point where the corporation is practically defunct."). The Court of Chancery never applied such a test. The Court of Chancery instead applied a far more lenient test to Enterprises' corporate opportunity claim. This was error.

Under the Court of Chancery's erroneous test, a self-interested director or parent of a subsidiary need only show that the subsidiary "lacked . . . resources" to immediately purchase a property. Op. 57. As a result, the Court of Chancery encourages disloyal behavior by directors and corporate parents that would otherwise be bound by strict fiduciary duties. On this point, Appellees offer no response, nor do they address the authorities cited by Appellees on this subject (*e.g.*, *Gen. Video Corp.*, *supra*, *Yiannatsis*, *supra*, *Irving Trust Co. v. Deutsch*, 73 F.2d 121 (2d Cir. 1934)).

Appellees likewise misunderstand *Thorpe v. CERBCO, Inc*., 676 A.2d 436 (Del. 1996) and its holding. Enterprises cited *Thorpe* in explaining why RG Junior cannot rely on his general right to not put money into CanCan as a means of justifying his usurpation of the Church Property. *See id*. at 442 ("statutorily granted rights . . . cannot be interpreted to completely vitiate the obligation of loyalty"). Appellees respond that *Thorpe* involved misrepresentations by controlling shareholders to a board, and therefore should not control. Appellees' response is no defense to the core point for which Enterprises cited *Thorpe*. RG Junior concealed

his actions from the other stakeholders to usurp CanCan's opportunity for himself; that he did not need a misrepresentation to carry out that faithless scheme is beside the point. Appellees have no answer for the simple point that RG Junior was not obligated to continue to invest in the project, but was obligated to invest only through CanCan in CanCan's opportunities, should he desire to invest. *Compare* Br. at 20-21 *with* Appellees' Memorandum of Law ("Ans. Br.") at 24. The alternative is an invitation to usurpation.

Appellees do not dispute that the Court of Chancery's novel approach marks a key break with Delaware corporate opportunity jurisprudence. *See* Ans. Br. at 18-24. Appellees' silence in the face of that basic point is telling. The correct legal test for financial inability under *Guth* is an insolvency test, not a test for "lacking resources." The Court simply failed to apply the proper test. Enterprises' appeal of the erroneous legal test applied by the Court below should be affirmed.

C. The Usurpation Cannot Be Defended as "Justified"

Unable to defend the Court of Chancery's mistake of law, the Appellees expend their energies attempting to justify the usurpation by RG Junior. Ans. Br. at 3, 14, 20. This approach is legally misplaced under *Guth* and groundbreaking as a practical matter. Just as the Court of Chancery erred in applying the incorrect test for financial inability under *Guth*, Appellees err in contending that a usurpation may be justified by the actions of a third party. *Guth* and its progeny nowhere

permit a usurpation to be justified; if a corporate opportunity is usurped, it is a breach of fiduciary duty, period. *Guth*, 5 A.2d at 511.

Appellees rely heavily on the argument that the usurpation was justified by legal claims that Sandra Manno made. "[I]t is those assertions of ownership [by Sandra Manno] that caused RG Junior to take the actions he did," Ans. Br. at 3, because such claims created "risk[]" of a "cloud" on the title of the Church Property. *See* Ans. Br. at 14 ("[Ms. Manno's] claims made it impossible for CanCan to exercise the option to purchase the Church Property or other needed parcels without risking a cloud on the title that would make financing impossible.").[1] This concession as to RG Junior's motive (couched as a justification) confirms that Enterprises' appeal should be affirmed. A majority stakeholder, confronted with competing claims to a property, must resolve the claims; it cannot simply usurp the property for himself and point to the competing claims as justification.[2]

[1] *Accord* Ans. Br. at 19 ("Manno's claims to own the subsidiaries put a cloud on CanCan's ability to exercise the options to purchase the land needed for the project such that it would have been impossible to find financing if CanCan did go forward with the purchase.").

[2] Appellees' "justification" argument further depends on twisting the case chronology. According to Appellees, RG Junior was maneuvering in July 2011 to prevent an (imaginary) act by David Flaum. Ans. Br. at 20; (A332) ("Frankly, we were nervous about -- preserving CanCan and, of course, my interest as well -- advertising that we were going to purchase the church land, because we were afraid Mr. Flaum might do that."). Yet Appellees then claim on the other hand that Mr. Flaum introduced himself months later, and "out of the blue." Ans. Br. at 16 ("RG

There is no legal authority for excusing a usurpation of a corporate opportunity based on a separate dispute with an officer of a company (and Appellees cite none). Appellees' assertion that RG Junior's usurpation of CanCan's opportunity may be justified by RG Junior's separate legal dispute with his former business partner, Sandra Manno, is unfounded as a matter of law.

Nor did the Court of Chancery adopt the view (now pressed by Appellees on appeal) that the usurpation was justified by a separate dispute between Sandra Manno and CanCan. *See* Op. 1-61. The Court of Chancery nowhere accepted the justification defense now offered by Appellees; the Court of Chancery relied exclusively on its interpretation of the first *Guth* factor (financial inability). *Id.*

The practical consequences of Appellees' new position are momentous because, under Appellees' theory, a corporate parent could justify and excuse its usurpation on the basis of a legal dispute that it alleges is "clouding" the opportunity. It would take very little for interested directors and corporate parents to find "clouded" opportunities wherever they would be helpful to the director or parent interested in usurping attractive opportunities. *See Irving Trust*, 73 F.2d at 124 ("If directors are permitted to justify their conduct on such a theory, there will be a

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Junior was unaware of Flaum's involvement until he received an email from Flaum 'out of the blue' on September 6, 2011."). Appellees' failure to present an accurate and internally consistent timeline reflects Appellees' flawed response on this point.

temptation to refrain from exerting their strongest efforts on behalf of the corporation since, if it does not meet the obligations, an opportunity of profit will be open to them personally."); Annotation, *Financial Inability of Corporation to Take Advantage of Business Opportunity as Affecting Determination of Whether "Corporate Opportunity" was Presented*, 16 A.L.R.4th 185 (1982) (collecting cases). Appellees' argument is simply incorrect and, by allowing disputes or "clouds" to act as fig leaves for disloyal conduct, would drastically change the landscape for fiduciary duties in Delaware.

Because usurpation may not be "justified," and because the Court of Chancery applied an incorrect standard for financial inability, Enterprises' appeal should be sustained.[3]

[3] Appellees do not dispute that the Court rejected the usurpation claim (in three sentences) on the basis of the first *Guth* factor (only), and that the record demonstrated that Enterprises met all the other factors under *Guth*. *See* Br. at 21 n.7.

II. The Court of Chancery Erred in Its Application of the Tests for Fair Process and Fair Price

Appellees' opposition to Enterprises' challenge to the entire fairness of this undisputedly self-interested transaction is extremely limited in substance. The sum total of Appellees' opposition to Enterprises' challenge is: (1) one page of text tepidly defending the unfair process of the dissolution and sale, Op. 11, and (2) numerous pages urging the Court to adopt a one-sided and selective approach to the real world, contemporaneous data about fair price. *Id*. at 27-30. Because the Court of Chancery erred in its application of the "entire fairness" analysis, Enterprises' appeal should be sustained.

A. Unfair Process

Appellees cannot justify the dissolution and sale process as fair. Appellees offer just one page of argument in opposition to Enterprises' unfair process arguments, and nothing on that page can resist Enterprises' appeal.[4]

Fair process "embraces questions of when the transaction was timed, how it was initiated, structured, negotiated, disclosed to the directors, and how the approvals of the directors and the stockholders were obtained." *Weinberger*, 457

[4] The standard of review for findings of entire fairness is not in dispute. *See* Br. 2: "The Court of Chancery committed clear error when it held that, under the onerous standard of entire fairness, RG Junior's self-interested freeze-out of Enterprises was 'entirely fair.'" "[T]he trial court's findings upon application of the duty of loyalty or duty of care, being 'fact dominated,'" must be "the product of a logical and deductive reasoning process." *Cede & Co*., 634 A.2d 345, 360 (Del. 1993).

A.2d at 711. As Enterprises demonstrated, the Court of Chancery committed clear error when it held that, under the onerous standard of entire fairness, RG Junior's self-interested freeze-out of Enterprises was entirely fair. The dissolution was initiated in secret, structured and negotiated to benefit RG Junior, and completed without any prior disclosure or checks and balances. Op. 24-33. This was a textbook case of unfair process, as Appellees' terse response tacitly acknowledges.

Appellees contend that Enterprises "ignores the reality" that there was "no independent party to oversee the dissolution and sale." Ans. Br. at 31. On the contrary. Enterprises does not overlook that reality; it is precisely that reality – and Appellees' deceptive dealing – that Enterprises challenges as fundamentally unfair. *See, e.g.*, Br. at 23-26.

Appellees do not challenge Enterprises' point that the transfer of CanCan's assets to LHI was not necessary for CanCan to avoid immediate failure, and that the Court erred in concluding otherwise. Appellees merely assert that the timing "did not favor RG Junior" or prevent Enterprises "from obtaining alternative financing." Ans. Br. at 31. This is a non-sequitur.

The unfair process (and the "put up or shut up" transaction in particular) was designed not to accomplish a legitimate business end, but to repay the usurping member for the cost of buying up CanCan's property. In the alternative, the process would freeze out once and for all a minority stakeholder aligned with Sandra

Manno. The "put up or shut up" call was designed to achieve ends other than the best interests of CanCan, and its timing, structure, and initiation were designed to serve RG Junior's interests over those of the minority stakeholder, Enterprises. The process was plainly unfair under *Weinberger*.

Appellees spill much ink attempting to parse the statement that "RG Junior was motivated by animosity towards Ms. Manno and paranoia about Mr. David Flaum." Opp. at 26 (quoting Br. at 23). Appellees protest too much. Appellees concede that RG Junior was "thoroughly fed up with Manno's antics," *id*. at n.4 (quoting Appellees' own post-trial brief), and was "devastat[ed]" by her claims. *Id*. at 20. RG Junior *himself* described his actions as motivated by "paranoia" (and did so six times); Enterprises' citation to those statements was in no way "out of context," as Appellees would have it. Ans. Br. at 19. RG Junior used that term repeatedly to describe his actions, and similarly stated that "somewhat irrationally, I wanted to fight [Sandra Manno's accusations] back." (A329).

Appellees' parsing is thus strained and simply misplaced. If they prefer to call RG Junior "thoroughly fed up" rather than, as he called himself, "devastat[ed]," "paranoid," and "somewhat irrational[]," RG Junior's self-interested process was still unlawful. *Weinberger*, 457 A.2d at 710 ("The requirement of fairness is unflinching in its demand that where one stands on both sides of a transac-

tion, he has the burden of establishing its entire fairness, sufficient to pass the test of careful scrutiny by the courts.").

Appellees similarly claim that they are disadvantaged by Enterprises' recounting of the facts as set forth in the Court of Chancery's opinion, as Appellees repeatedly contend that greater weight should be given to the "surrounding facts" outside the Court's opinion, Ans. Br. at 2, and the "record surrounding the Vice Chancellor's determination," *id*. at 26. There is no citation provided for this novel theory of appeals from judgments, and of course there is no support for it. Appellees, try as they might, cannot re-write the Court of Chancery's opinion or resist Enterprises appeal based on theories that the Court never adopted.

B. Unfair Price

Appellees would have this Court adopt a one-sided and highly selective approach to the test for fair price, one that carefully carves out the contemporaneous calculations by Appellees as to price, and carves in what Appellees believe supports their position. Delaware law does not permit that one-sided approach.

1. Appellees' Argument Depends on Excluding Appellees' Own Contemporaneous Data

Enterprises received zero value, notwithstanding the contemporaneous records Appellees had themselves generated that showed that CanCan was on such strong footing that it merited financing not just in the tens of millions of dollars, but hundreds of millions of dollars. Importantly, Appellees do not deny that Can-

Can's fortunes – and the value of the Church Property – remained constant in the months between the $400 million dollar financing proposal and the dissolution. *Compare* Br. at 11 *with* Ans. Br. at 27-31.

On appeal, Appellees ask the Court to disregard the contemporaneous facts and figures that they themselves generated, pointing primarily to the fact that several of the deals did not consummate prior to the ultimate agreement that launched the casino under the name Scarlet Pearl. The financings may not have consummated under the CanCan label, but they were approved based on Appellees' own projections (which reflected Cancan's "unique value" and tremendous "promise," as RG Junior noted (A350-51)). Indeed, the dissolution occurred shortly after RG Junior attempted to sell his CanCan stake at an overall valuation of $15.3 million, or more than 7 times the ultimate sale price. The projections remain uncontested and CanCan never sought to amend them.[5] Appellees' calculations were accurate and preclude Appellees' attempt to carve them out of the fair price analysis.

In contrast to Appellees' approach to their own contemporaneous documents and projections, Appellees urge the Supreme Court to find it probative of CanCan's value that Manno and Enterprises declined to participate in the final capital

[5] Indeed, Appellees' internal calculations of CanCan's value were circulated in various deal documents to investors. If those calculations were as invalid as Appellees now suggest, Appellees could face penalties for securities violations.

call. *See* Ans. Br. 28 ("And if it were true that CanCan was really worth $15 million or more as Manno Enterprises now contends, why did Manno and Flaum never take RG Junior up on his offer or participate in the capital call to support the project?"). But stakeholders were not required to contribute additional capital to CanCan, as Appellees themselves concede elsewhere in their brief. *Id*. at 13. Thus, there is no basis in the parties' Operating Agreement or under Delaware law for the notion that an election not to contribute reflects that the company lacks value. And the Court of Chancery nowhere adopted this odd contention.

Moreover, the Court of Chancery nowhere adopted Appellees' similar contention that CanCan lacked inherent value due to Sandra Manno's prior claims. *See* Ans. Br. at 30 ("[O]ne thing that had harmed CanCan's inherent value here was Manno and Manno Enterprises' claims that Manno owned CanCan's subsidiaries, options and intellectual property."). There is absolutely no basis (and certainly none recognized by the Court of Chancery) for the contention that CanCan lacked value due to Ms. Manno's claims. *See* Op. 1-61. Yet Appellees contend that contention should help outweigh their own contemporaneous documents reflecting significant value. *E.g.*, Ans. Br. at 30.

Appellees would have the Supreme Court (and Chancery Court) disregard CanCan's records, financing proposals, and valuations, but treat an election not to participate in a "put up or shut up" capital call, and a claim raised by a former

manager, as proof of CanCan's value. No case supports that legally invalid approach.

1. Appellees' Argument Depends on Misreading Delaware Cases

Appellees' attempt to reinterpret the cases that the Court of Chancery cited fares no better. None of the cases justifies a return of $0.00, notwithstanding the contemporaneous records of that same company.[6]

Blackmore was cited by the Court of Chancery for the proposition that a fiduciary can potentially satisfy the entire fairness standard in a transaction where an interest holder receives nothing if the fiduciary proves that there was no future for the business and no better alternative for the interest holders. Op. 58. Enterprises explained that *Blackmore* was no bar to Enterprises' claim, as CanCan had a future so long as RG Junior did not violate his duties. "As in *Blackmore*, there was no transaction that could have been 'worse' for Enterprises than what RG Junior designed. And a properly motivated supermajority would not have scuttled CanCan to permit LHI to usurp its opportunities." Br. at 25. To this point, Appellees only respond that the posture of *Blackmore* was different, speculate that *Blackmore*

[6] The unfairness of the price is not excused by the liquidation preference, because the process and price led to less value being delivered to CanCan, not just Enterprises. And Appellees err when they write that "CanCan's value never exceeded RG Junior's liquidation preference." It is unchallenged that RG Junior offered to be bought out in February 2011 for $10 million, which implied a value for CanCan of $15.3 million. *See* Ans. Br. at 28; *id*. at 11 (noting that "exiting at $10 million would have given [RG Junior and his father] a positive return").

might have been decided differently on remand, and reiterate the Court of Chancery ruled in Appellees' favor, without attempting to defend the ruling on the merits. Ans. Br. at 26. This is no answer at all. Because there was no transaction that could have been worse for Enterprises than what RG Junior designed, the structure was unfair. A properly motivated supermajority would not have permitted RG Junior's improper actions, and *Blackmore* is not to the contrary.

The Court of Chancery similarly cited *In re Trados Inc. S'holder Litig.*, 73 A.3d 17 (Del. Ch. 2013) for the proposition that fiduciaries have not necessarily breached their duties (in a transaction where an interest holder received nothing) when the fiduciaries proved that the interest had no economic value before the transaction. Op. 58. Enterprises explained that in CanCan's case, it was undisputed that – shortly before the dissolution – RG Junior himself knew the project had great value (CanCan being worth $15.3 million dollars (Op. 24)), and that at approximately the same time his co-manager, Toth, knew CanCan had such significant value that he directed a third party to secure $400 million dollars in financing. Appellees do not offer any rejoinder whatsoever to Enterprises' point that *Trados* is no obstacle to Enterprises prevailing.

Instead, the Appellees describe themselves as "confus[ed]" that Enterprises further cites *Ross Holding & Mgmt. Co. v. Advance Realty Grp., LLC*, No. 4113-VCN, 2014 Del. Ch. LEXIS 173 (Del. Ch. Sept. 4, 2014), a case that applied *Tra-*

dos, as authority that supports Enterprises' challenge to the entire unfairness of the dissolution and sale. But there should be no confusion: *Ross Holdings* found an unfair process where a sale price returned inadequate value notwithstanding the undisputed value of the stock at the time of a corporate reorganization. The defendants in *Ross Holdings* sought to justify their unfair process by contending that absent the challenged reorganization itself, the stock would have been worthless. "Defendants also contend that, because of the severe economic downturn, ARG's units would have been worthless if the Reorganization had not occurred." *Id*. at *68. The Court of Chancery rejected that claim as divorced from the actual facts, because the contemporaneous documentation showed genuine value.

Appellees make the same mistake the defendants did in *Ross Holdings*. Appellees urge the Court to close its eyes to the actual calculations of corporate value made by Appellees in 2011 and instead rely on red herrings like Sandra Manno's claim against CanCan and Enterprises' election not to participate in the final capital call (theories that the Court of Chancery never adopted). As in *Ross Holdings*, supposition and strained inference cannot trump contemporaneous documentation and simple facts showing genuine value.

In short, notwithstanding Appellees' attempt to rewrite the legal cases cited by the Court, none of the cases precludes Enterprises' appeal, and indeed a proper reading of them demonstrates that they bolster Enterprises' argument.

III. The Undisputed Dilution Cannot Be Immunized by Appellees' Other Disloyal Actions

Appellees only faintly oppose Enterprises' appeal of the Court's dilution ruling, and Appellees again rely simply on the fact that the Court ruled in Appellees' favor, rather than on any argument that the Court's approach was correct. The dilution of Enterprises' interest cannot be justified on the basis of Appellees' subsequent, improper dissolution and sale of the company, nor can it be justified as "rough justice" i.e. payback to a separate party, Sandra Manno.

The Court of Chancery made an error of law when it concluded that – even though RG Junior's approach was "more dilutive," Op. 55, than it should have been – such dilution was excused by the sale price (i.e. 7.19% of $0.00 was no different from 6.6001% of $0.00). Under Delaware law, self-interested transactions must meet a high bar. *Weinberger*, 457 A.2d at 711. The dilutions were not structured fairly, and it is no answer to say that the dilution was excused by RG Junior's other unfaithful actions that led to Enterprises receiving zero value. *See Kahn v. Lynch Communication Sys*., 669 A.2d 79, 84 (Del. 1995) (entire fairness test is not bifurcated or compartmentalized but requires an examination of all aspects of the transaction). Enterprises was entitled to its 7.19% interest, and to receive full value for it, in the face of a dissolution that was objectively unfair.

The key facets of this "rough justice" dilution show it to be entirely unfair. Appellees do not, because they cannot, deny these hallmarks. *See* Ans. Br. at 32-

34. Appellees do not deny that the fifth capital call was overly large and intended to make Enterprises "put up or shut up." *Id.* Appellees do not deny that the dilutions sought to prevent Enterprises from being able to protect itself. *Id.* Appellees do not challenge Enterprises' citations to *Weinberger*, *Kahn v. Lynch Communication Sys.*, 669 A.2d 79, 84 (Del. 1995), or *ATR-Kim Eng Fin. Corp. v. Araneta*, 2006 Del. Ch. LEXIS 215, *62 (Del. Ch. Dec. 21, 2006), and do not grapple with those cases whatsoever. *See* Ans. Br. at 32-34. And most tellingly, Appellees do not defend the Court's conclusion that the improper dilution was payback or "rough justice" to separate party Ms. Sandra Manno. *Id.* Like the Court of Chancery, Appellees point to no case that permits a supermajority holder to dilute a minority stakeholder's stake as a means of striking back against a third party.

Appellees' breaches led LHI to build a casino on CanCan's property and on the foundation laid by CanCan and Enterprises. Enterprises respectfully requests that the Court of Chancery's Memorandum Opinion and Final Order and Judgment be reversed and that judgment be entered in favor of Enterprises.

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