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IN THE SUPREME COURT OF THE STATE OF DELAWARE

MARTIN MUGICA and ULTINER LLC, Defendants Below, Appellants, v. LORENZO ROCCIA and TRANSATLANTIC GROUP PARTNERS LLC, Plaintiffs Below, Appellees and SKYLINE RENEWABLES LLC, Nominal Defendant Below, Appellee.	)	No. 66, 2021 Court Below: Court of Chancery of the State of Delaware C.A. No. 2020-0641-MTZ

APPELLEES LORENZO ROCCIA AND TRANSATLANTIC GROUP PARTNERS LLC'S ANSWERING BRIEF

PRICKETT, JONES & ELLIOTT, P.A.
Bruce E. Jameson (#2931)
John G. Day (#6023)
Stephen D. Dargitz (#3619)
Elizabeth Wang (#6620)
1310 King Street
Wilmington, Delaware 19801
(302) 888-6500

Attorneys for Appellees Lorenzo Roccia and Transatlantic Group Partners LLC

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NATURE OF PROCEEDINGS

Plaintiff Lorenzo Roccia and Defendant Martin Mugica control Transatlantic Power Holdings LLC ("Holdings"), a Delaware limited liability company ("LLC"). The limited liability company agreements of both Holdings and its managing member give Roccia and Mugica equal voting rights and control over both entities. Consistent with their equal control rights, Roccia and Mugica also serve as Holdings' two designated directors on the board of managers (each a "Manager," collectively, the "Managers" or the "Skyline Board") of Skyline Renewables LLC ("Skyline"), an affiliate of Holdings. On May 11, 2020, Mugica purported to remove Roccia as a Manager from the Skyline Board.

On July 31, 2020, Roccia and an affiliated entity filed the action below pursuant to 6 *Del. C.* §18-110, seeking a declaration that Mugica's purported removal of Roccia from the Skyline Board was invalid. Consistent with the summary nature of proceedings under 6 *Del. C.* §18-110, the parties agreed to limit the issues for trial and present them on cross motions for summary judgment. On October 21, 2020, the parties stipulated to the filing of an amended complaint that narrowed the issues to be addressed by the trial court. B1–B37; Op. 5, ¶F & nn.21–23.[1]

[1] Citations in the form of "OB at ___" refer to Appellants' Opening Brief. Citations in the form of "Op. __, ¶__" refer to the Court of Chancery's Order Granting Plaintiffs' Motion for Summary Judgment and Denying Defendants' Motion for

The documents governing the relationship between Roccia and Mugica at Holdings make clear in multiple ways and at multiple levels that the contractual division of power between them is equal on, *inter alia*, all governance-related matters, including the appointment of directors to the boards of the companies in which Holdings invests. Defendants' main argument on appeal is that Holdings is a holding company, thereby requiring the courts to contort the ordinary meanings of the express terms in Holdings' governance documents that confer officers with usual and customary power over the "business and operations" of Holdings. OB at 3–4, 33–35. This argument was not fairly raised below. *Cf.* A61–A85. Regardless, this argument fails because the Vice Chancellor appropriately interpreted and applied "the plain-meaning of the contract's terms and provisions." Op. 6–7, ¶H.

Defendants acknowledge that under the relevant agreements, Mugica's authority as CEO was "[s]ubject to the ultimate control of the Board," (OB at 29, 35 n.8), but Defendants never explain why that language does not override their assertion that Mugica, as an officer, can supplant the Board's authority to designate directors of Holdings' affiliates. Defendants' only explanation is that Mugica's decision to remove Roccia was "subject to the Board's ultimate authority to reverse

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Summary Judgment dated December 29, 2020 (the "Order"), attached as Exhibit A to OB. Citations in the form of "Final Judgment ¶__" refer to the Court of Chancery's Implementing Order and Final Judgment dated February 1, 2021 (the "Final Judgment"), attached as Exhibit B to OB.

him," (OB at 21), a meaningless contention for an entity in which Mugica and Roccia share equal control. Defendants' suggestion that officers have *unlimited* authority, subject to the Board's *limited* power to reverse those decisions, is legally unprecedented, contrary to the terms of Holdings' governing documents, and at odds with decades of Delaware law delineating the respective roles and powers of directors and officers of Delaware corporations. Although Holdings is an LLC, corporation law appropriately guided the Court of Chancery's decision because, as the trial Court stated, the relevant contracts "granted plenary power to [Holdings'] board, and only limited authority to Mugica, as president and CEO, analogized to the authority held by a corporate officer in the same position." Op. 11, ¶3 & nn.42–43.

The parties presented cross motions for summary judgment below. The Court of Chancery granted plaintiffs' motion and denied defendants' motion by Order dated December 29, 2020 and Implementing Order and Final Judgment dated February 1, 2021. The Court of Chancery's decision should be affirmed.

SUMMARY OF ARGUMENT

1. Denied. The Court of Chancery correctly gave effect to the plain-meaning of the terms of the Holdings Operating Agreement and Mugica's Employment Agreement when it held that the power of Mugica, as CEO of Holdings, was limited, was "subject to the ultimate control of the Board," and did not include the right to remove Roccia from the Skyline Board while acting unilaterally as an officer. The contractual relationship between Roccia and Mugica was based on a foundation of equal representation and power at the board level of Holdings and its affiliates. While Mugica was granted broad authority over the operational matters of Holdings, that authority did not extend to governance matters. The trial court's holding gave priority to the parties' intentions and effectuated the parties' intent as is required by Delaware law.

2. Denied. Defendants' argument was not fairly raised below and should be denied on that ground alone. If the Court considers the argument on the merits, Defendants' argument still fails. Defendants' argument that Holdings' "business and operations" are limited because Holdings is a "holding" company disregards the express definition in the Holdings Operating Agreement and is meritless. As the trial court recognized, the Holdings Operating Agreement defines the business of Holdings as acquiring, developing, building, and operating renewable energy assets. Op. 14, ¶7 & n.53. And, as a factual matter, Holdings conducts all of those activities

either directly or indirectly through subsidiaries. Defendants' argument rests on the faulty proposition that only activities that Holdings conducts "directly," as opposed to indirectly through affiliates, can be considered part of its business and operations. That premise is an artificial, semantic distinction unsupported by the facts, law, or realities of how businesses operate.

3. Admitted that this Court may address *de novo* the issue of whether Roccia's purported removal from the Skyline Board violated the terms of the Skyline Operating Agreement. Denied that Mugica's purported removal was permitted by the Skyline Operating Agreement. Holdings, as a party to the Skyline Operating Agreement, is bound by all its terms. Section 7.2(a) of that agreement states that "Lorenzo Roccia shall be the initial Chairman of each Board established prior to the third (3rd) anniversary of the Effective Date . . . [and] . . . ***shall not be removed*** as the Chairman of any Board, except for Cause (as defined in the Management Services Agreement) upon a unanimous vote of the Managers with respect to such Board." A304 (emphasis added). The purported removal occurred within that three–year period and the Skyline Board never voted on the removal. The specific protections afforded by Section 7.2(a) take precedence over the general removal power of Section 7.6 of the Skyline Operating Agreement.

STATEMENT OF FACTS

I. BACKGROUND AND THE EQUAL OWNERSHIP AND GOVERNANCE STRUCTURE OF THE TRANSATLANTIC ENTITIES

A. The Transatlantic Entities' Formation and Structure

In late 2015, Roccia and Mugica met and agreed to engage in a venture to pursue renewable energy opportunities. B61–B62 at ¶¶14–15. In furtherance of that agreement, in 2016 they formed Holdings. B62–63 at ¶16. Roccia and Mugica equally control Holdings through interests in Holdings and several other companies described below. A chart showing the ownership and management structure of these entities was submitted below as Addendum A to Plaintiffs' opening summary judgment brief and is submitted herewith as B38–B39. The Court of Chancery succinctly and accurately summarized the ownership and management structure of the relevant entities. Op. 2–4, ¶¶A–C. That structure (explained in more detail below) evidences Roccia's and Mugica's intent that they would each have equal ownership and equal control of the boards of Holdings and its affiliates. The trial Court found such equal power exists between them at Skyline, Holdings and Holdings' Managing Member. Op. 3–4, ¶C.

Holdings is governed by the August 19, 2016 Holdings Operating Agreement. A143–A233. Roccia and Mugica also formed Transatlantic Ultiner LLC ("Managing Member") to serve as Holdings' managing member. B63–B64 at ¶¶17,

21. The Managing Member is governed by the September 12, 2016 Managing Member Operating Agreement. A106–A141.

The Managing Member owns a 75.8% "Managing Member Interest" in Holdings. Eight investors hold the remaining 24.2% of Holding's equity in the form of "Investor Membership Interests." Op. 2, ¶A n.5; A231. The Investor Membership Interests have no voting rights, except as to certain enumerated fundamental strategic transactions not pertinent to this action. Op. 2, ¶A n.5; A168–A169, §4.06(b). Thus, as to most matters, only the Managing Member Interests held by the Managing Member have voting rights.

The Managing Member is owned equally by plaintiff, Transatlantic Group Partners LLC ("Transatlantic Group Partners") and defendant Ultiner LLC ("Ultiner"), each of which holds a 50% interest in the Managing Member. Op. 2, ¶A; A141. Transatlantic Group Partners is controlled by Roccia, and Ultiner is controlled by Mugica. B64 at ¶¶19–20.

B. The Holdings And Managing Member Operating Agreements Are Premised on The Equal Representation And Power of Roccia And Mugica at The Board Level

Article VI of the Managing Member Operating Agreement governs management of the Managing Member. A114–A115. Section 6.01 states in part:

> For so long as the Membership Interests are held equally between Transatlantic [Group Partners] and Ultiner, unless the Board determines otherwise, authorized representatives of Transatlantic [Group Partners] and

> Ultiner must both manually execute any written agreement for any such agreement to be binding on the Company.

Section 6.02 fixes the number of managers on the Managing Member's board of managers at no less than two and no more than four "with the Managers to be represented proportionally to the Membership Interests held by Transatlantic [Group Partners] and Ultiner respectively at all times." A114. Because Transatlantic Group Partners and Ultiner each hold 50% of the interests in the Managing Member, they must each have equal representation on the Managing Member board. The initial managers designated under the Managing Member Operating Agreement were Roccia and Mugica. *Id.*, §6.02.

Section 6.02 goes beyond just *requiring* equal board representation. It *prohibits* any action by the Managing Member board unless Transatlantic Group Partners and Ultiner have equal representation.

> For so long as the Membership Interests are held equally between Transatlantic [Group Partners] and Ultiner, ***the Board may not act unless the number of Managers representing Transatlantic [Group Partners] equals the number of Managers representing Ultiner***. If the Board decides in the future to issue additional Membership Interests to an Independent Third Party, any such Member shall have no voting representation rights on the Board.

Id. (emphasis added).

Because of the 50-50 division of power between Roccia and Mugica, Article VII of the Managing Member Operating Agreement creates a procedure for

resolving deadlocks. A115–A118. If the Board cannot reach a decision on a "Material Issue"[2] and cannot resolve such Material Issue through good faith negotiations or mediation, then a buy-sell process may be initiated by either Transatlantic Group Partners or Ultiner. A116–A117 §§7.01(c), 7.02. Defendants reference an unrelated suit that filed by Transatlantic Group Partners in the Circuit Court of the State of Oregon. OB at 20. That suit was dismissed for lack of jurisdiction without ever addressing the merits, and is unrelated to the issues on appeal. B53.

Consistent with, and in addition to, the equal ownership and management rights that Roccia and Mugica have in the Managing Member under its Operating Agreement, Roccia and Mugica also possess equal management and voting rights under the terms of the Holdings Operating Agreement. A143 *et. seq.* Article VIII of the Holdings Operating Agreement establishes a board of directors to manage Holdings:

> The business and affairs of the Company shall be managed, operated and controlled by or under the direction of the Board, and the Board shall have, and is hereby granted, the full and complete power, authority and discretion for, on behalf of and in the name of the Company, to take such actions as it may in its sole

[2] "Material Issue" is defined as "any issue relating to (1) a significant change in the ongoing or planned operation or management of the Company or any direct or indirect Subsidiary of the Company, or (2) a Material Financial Issue with respect to the Company or any direct or indirect Subsidiary of the Company." A116, §7.01(a).

> discretion deem necessary or advisable to carry out any and all of the objectives and purposes of the Company, subject only to the terms of this Agreement.

A179–A180, §8.01.

Section 4.08 specifies that, among members, only the Managing Member has "the power to act for or on behalf of, or to bind" Holdings. A170.

Section 8.02 of the Holdings Operating Agreement designates Roccia as the initial Chairman of the Board of Holdings, and Mugica as the initial President and CEO. A180. It also provides for a four-member Board consisting of two additional persons appointed by Roccia and Mugica respectively. *Id*.

Directors of Holdings can be removed only by the Managing Member. A180, §8.03(a). That means, in effect, that any director of Holdings cannot be removed without the consent of both Roccia and Mugica. Removal of Roccia and Mugica themselves as directors of Holdings is even further restricted: "The President and Chief Executive Officer and Chairman of the Board may not be removed in the same manner as any other Officer or Director of the Company, but shall hold office until his death or resignation or removal for cause." *Id*.

In addition to requiring equal representation between Roccia and Mugica on the Holdings Board, the Holdings Operating Agreement also extends the equal representation requirement to all subsidiaries of Holdings. A180, §8.02(a) ("At all times, the composition of any board of directors of any Company subsidiary shall be

the same as that of the Board."). The term "subsidiary" is defined as any entity in which Holdings owns a majority of the "power to vote for directors or comparable managers." A157.

To prevent strategic maneuvering by one side to act at a Board meeting where the other is absent, all four directors must be present for a quorum. A181, §8.05(a). Action by written consent is permitted, but if the written consent is by majority vote of the directors, rather than unanimous vote, such action can only be taken if prior written notice of the intended action is given to all directors at least one day in advance. A182, §8.06(a).

II. SKYLINE IS FORMED AND ROCCIA'S AND MUGICA'S ROLES MIRROR THEIR ROLES AND POSITIONS AT HOLDINGS

In 2018, Holdings reached an agreement with Ardian, a large private equity company based in France. Through Ardian's controlled subsidiary, Windpower Americas I, LLC ("Windpower I"), Ardian and Holdings formed Skyline as a Delaware LLC. Skyline was formed primarily to acquire and develop renewable power assets with a focus on wind-power generation. B65–B66 at ¶¶23–24; OB at 13. Skyline is governed by an Amended and Restated Limited Liability Agreement of Skyline Renewables LLC effective as of February 23, 2018 (the "Skyline Operating Agreement"). A258–A351.

The two members of Skyline are Holdings and Windpower I. A338–A339. Skyline has two classes of membership interests: the Class A interests are voting

interests; the Class B interests are non-voting. A284, §3.1(c). Holdings owns 100% of the Class B membership interests and 0.5% of the Class A membership interests. The remaining 99.5% Class A interests of Skyline are owned by Windpower I. *See* Op. at 2, ¶A & n.4; A339; A343; OB at 13. Further, the Class B interests held by Holdings vest over a five-year schedule or upon the occurrence of certain conditions. A286, §3.2(b).

In addition to being a Skyline member, Holdings also serves as the "Asset Manager" of Skyline pursuant to the terms of a Management Services Agreement. A360–A397. Mugica derives his position as CEO of Skyline solely through Holdings' position as Asset Manager. B96–B98 at ¶¶10–13; B102–104 at ¶¶25–30; *see also* A373, §2.4 ("The Asset Manager shall provide the Services through its ***employees***, including the ELT Members [consisting of, *inter alia*, Mugica]." (emphasis added)).

Holdings, as a member of Skyline, is a party to and bound by the Skyline Operating Agreement. A262; A343. Section 7.1 of the Skyline Operating Agreement specifies that the Skyline Board shall consist of five Managers, three of whom are designated by Ardian. A303, §7.1(c) & (e). Holdings designates the remaining two Managers. Roccia and Mugica are designated as Holdings' two initial Managers. *Id.*, §7.1(f).

Mirroring the Holdings Operating Agreement, the Skyline Operating Agreement designates Roccia as Skyline's initial Chairman of the Board, and Mugica as Skyline's initial President and CEO. A304, §7.2(a); A307, §7.7(a).[3] Roccia is designated as the Chairman of Skyline for a period of three years from the Effective Date of the Skyline Operating Agreement. A304, §7.2(a). That three-year period ended on February 23, 2021, *i.e.*, after Mugica's May 11, 2020 Removal Letter. *Id.*; A262 (Effective Date being "February 23, 2018"). Prior to the three-year anniversary date, Roccia could be removed only for cause upon a unanimous vote of the Skyline Managers. A304, §7.2(a). After that date, Roccia may be removed by a majority vote of the Skyline Managers. *Id*.

Section 7.6 of the Skyline Operating Agreement permits a Manager to be removed by the member who initially designated such Manager. A306, §7.6(a). Section 7.6 and other provisions of the Skyline Operating Agreement do not state that this general removal right supersedes the specific right of Roccia to serve a

[3] Roccia is also designated as the initial Chairman of "each Board." A304, §7.2(a). The term "each Board" as used in the Skyline Operating Agreement means the Skyline Board and the boards of any Project Companies and Series of Skyline (as authorized by §18-215 of the Delaware LLC Act) which would function as the operating subsidiaries or divisions of Skyline. Skyline itself would serve as a holding company. A275 (definition of "Project Company"); A276 (definition of "Series"); A280–A281, §2.3.

three-year term as Chairman and the limitations on his removal thereof as set forth in Section 7.2(a).

III. MUGICA'S PURPORTED REMOVAL OF ROCCIA FROM THE SKYLINE BOARD

Following the creation of Skyline in 2018, various disagreements arose between Roccia and Mugica. The specific nature of those disagreements was not addressed by the parties or the Court of Chancery below because they are not relevant to this dispute, which turns strictly on the language of the relevant agreements. A566; A638. Nevertheless, Defendants assert in their opening brief that the disagreements stemmed from a preliminary discussion regarding the possibility of Ardian investing additional funds in Skyline. OB at 17–18; *cf.* B98 at ¶15. The real source of the parties' disagreements, however, stems primarily from attempts by Mugica to cut Roccia and Holdings out of the Skyline relationship in order for Mugica to forge a direct relationship with Ardian, and thereby divert benefits directly to Mugica that should flow to Holdings and its investors. A566; A636-A637; B98–B100 at ¶¶14–19.

Plaintiffs believe that Mugica's attempted removal of Roccia arose from Roccia's refusal to permit Mugica to exit his contractual obligations to Holdings and forge a direct relationship with Ardian. B96–B97 at ¶¶9–10; B98–B100 at ¶¶14–19; B102 at ¶23. Ardian's preliminary discussion regarding the possibility of an additional investment was only the pretext for Mugica's delivery of his May 11,

2020 Removal Letter. Regardless of his motivation, however, Mugica's attempted removal of Roccia from the Skyline Board was ineffective because, as the Court of Chancery correctly held, removal was beyond the scope of Mugica's authority as Holdings' CEO under the plain language of the Holdings Operating Agreement and Mugica's Employment Agreement. Op. 10, ¶1; Final Judgment ¶2.

ARGUMENT

I. THE COURT OF CHANCERY CORRECTLY DETERMINED THAT MUGICA LACKED AUTHORITY TO REMOVE ROCCIA FROM THE SKYLINE BOARD

A. Question Presented

Did the Court of Chancery correctly interpret and apply the plain language of the Holdings Operating Agreement and Mugica's Employment Agreement in holding that the Holdings Board had plenary power and Mugica, as President and CEO, had only limited authority, which did not include the power to oust Roccia from the Skyline Board? Plaintiffs agree that the question was raised and considered below. Op. 6, ¶G; *id.* 10–18.

B. Scope of Review

Plaintiffs agree that this Court reviews the trial court's grant of summary judgment *de novo*. *Emerald Partners v. Berlin*, 726 A.2d 1215, 1219 (Del. 1999). The trial court's decision on summary judgment "is entitled to a high level of deference and is, therefore, rarely disturbed." *Telxon Corp. v. Meyerson*, 802 A.2d 257, 262 (Del. 2002).

Plaintiffs also agree that the Court "review[s] questions of contract interpretation *de novo*." *GMG Cap. Invs., LLC v. Athenian Venture Partners I, L.P.*, 36 A.3d 776, 779 (Del. 2012). When construing a contract, the Court must "give[] priority to the parties' intentions . . . [and] construe the agreement as a whole." *La Grange Communities, LLC v. Cornell Glasgow, LLC*, 74 A.3d 653, at *3 (Del. 2013)

(TABLE) (internal quotation marks and citations omitted). Construction of a particular provision cannot "conflict[] with the agreement's overall scheme or plan." *GMG*, 36 A.3d at 779. Where contract terms are unambiguous, the Court will interpret them "according to their ordinary meaning." *Id.* at 780. "Contract language is not ambiguous simply because the parties disagree on its meaning. Rather, a contract is ambiguous only when the provisions in controversy are *reasonably* or *fairly* susceptible of different interpretations." *E.I. du Pont de Nemours & Co. v. Allstate Ins. Co.*, 693 A.2d 1059, 1061 (Del. 1997) (internal quotation marks and citation omitted, emphasis added).[4]

C. Merits of Argument

1. The Court of Chancery Applied the Correct Legal Standards

Defendants do not contest, and therefore concede, that the Court of Chancery applied the correct legal standard in its Order when interpreting the relevant contracts. Op. 6–7, ¶H.

2. The Court of Chancery Correctly Held That Mugica Was Granted Only Limited Authority That Did Not Include The Authority to Remove Roccia From The Skyline Board

[4] *See also Masonic Home of Delaware, Inc. v. Certain Underwriters at Lloyd's London*, 80 A.3d 960, at *1 n.7 (Del. 2013); *NAMA Holdings, LLC v. World Mkt. Ctr. Venture, LLC*, 948 A.2d 411, 418 & n.17 (Del. Ch. 2007), *aff'd*, 945 A.2d 594 (Del. 2008); AM *Gen. Holdings LLC v. Renco Grp., Inc.*, 2020 WL 3484069, at *3 (Del. Ch. June 26, 2020).

Defendants focus on the general phrase "paramount and full" in the description of Mugica's responsibility and power as an officer. However, as the Vice Chancellor correctly held, that general term must be read in the context of other more specific phrases and grants of authority that (1) gave the Holdings Board plenary authority by expressly subjecting Mugica's authority "to the ultimate control of the [Holdings Board]," and (2) limited Mugica's authority to operational matters and matters that are "usually or typically vested in the office of president of a corporation." Op. 9, ¶J; *id.* at 11, ¶3 n.43 (*quoting* Mugica's Employment Agreement and the Holdings Operating Agreement). Further, the Court of Chancery correctly focused on the specific language that explicitly granted authority to Mugica in four areas, holding that "[b]y their plain meaning, none of these four categories gave Mugica authority to exercise the company's removal rights for directors of affiliated companies." Op. 13, ¶5. The trial Court then carefully went through each specific grant of authority and concluded that the plain language of the Holdings Operating Agreement and Mugica's Employment Agreement did not grant authority to Mugica, as an officer, to remove Roccia from the Skyline Board.

The correctness of the trial court's conclusion is demonstrated by several other factors. First, Defendants' argument is internally inconsistent. Defendants assert that the Holdings Board "place[d] ***ultimate*** authority to manage and control Holdings' affairs in Mugica, subject to the Board's ***ultimate*** supervisory powers."

See OB at 30 (emphasis added). Mugica and the Board cannot simultaneously both have "ultimate" authority or power. By definition, ultimate means "[a]t last, finally, or at the end." *See* Black's Law Dictionary (5th ed, 1979).[5] The language of the Holdings Operating Agreement and Mugica's Employment Agreement both expressly state that the Board has "ultimate" authority in the hierarchy. The adjective "ultimate" in those contracts describes only *the Board*'s authority, not Mugica's authority as CEO, and makes Mugica's authority expressly subject to the Board's. Op. 9, ¶J ("Subject to the ***ultimate*** control of the [Holdings Board] . . .") (*quoting* Holdings Operating Agreement and Mugica's Employment Agreement (emphasis added, alteration in original)). Thus, Defendants' argument that both the Board and Mugica possess ***ultimate*** authority is (i) inherently inconsistent, as both cannot simultaneously sit at the ultimate position in the hierarchy, and (ii) inconsistent with the specific language of the governing contracts, which use the adjective, "ultimate," only in describing the Board's authority, not Mugica's.

The Court of Chancery's conclusions are correct for additional reasons. *First*, the "paramount and full responsibility" language of Mugica's authority applies only to the "supervision, direction and control of the business and operations" of

[5] Similarly, The Cambridge Dictionary defines "ultimate" as "most important, highest, last, or final." *See* CAMBRIDGE DICTIONARY, available at https://dictionary.cambridge.org/dictionary/english/ultimate (visited May 20, 2021).

Holdings. A183, §8.09; A255. It does not extend—by its plain language—to decisions concerning the governance or appointment of directors or managers of Holdings and its subsidiaries or affiliates. Furthermore, the full context of the language makes clear the restricted scope of Mugica's authority, because it grants to the President/CEO paramount and full responsibility for supervision, direction and control of the business and operations "and the ***Officers and employees*** of the Company." A183, §8.09 (emphasis added). It does not include "supervision, direction and control" over Board designees of subsidiaries or affiliates. The same language also appears in Exhibit A to Mugica's Employment Agreement in the same provisions containing the "paramount" language cited by Mugica. A255. When the parties intended to give Mugica responsibility over specific individuals (*i.e.*, officers and employees), they did so expressly. Roccia, in his capacity as a Manager of the Skyline Board, is not an officer or employee of Holdings. Therefore, the power conferred upon Mugica in Section 8.09 of the Holdings Operating Agreement expressly does not apply to Holdings' appointment and removal of Managers to the Skyline Board.

Second, the President/CEO of Holdings cannot even appoint officers without Board approval, which is not limited to a *post hoc* veto power. Section 8.09 states that the President/CEO "may propose individuals as officers of the Company (the "**Officers**") as it deems necessary or desirable to carry on the business of the

Company; **and the Board shall approve such appointments**." A183–A184, §8.09 (emphasis added). Given that the President/CEO cannot appoint officers of Holdings without Board approval, it would be unreasonable and illogical to read the Holdings Operating Agreement to grant the President/CEO the unilateral authority to appoint and remove managers or directors of subsidiaries or affiliates; particularly where the director to be removed is also the Chairman and a director of Holdings.

Third, the intent of the parties generally to create equal governance rights between Roccia and Mugica is further evidenced by the mirror image use of the "paramount and full responsibility" language in describing both Mugica's authority as President/CEO ***and Roccia's authority as Chairman***. *See* A183, §8.09. *Compare* the relevant portions of Section 8.09:

> Subject to the ultimate control of the Board and other limitations set forth in this Agreement, the President and Chief Executive Officer ***shall have paramount and full responsibility and power for the general supervision, direction and control of*** the business and operations of the Company and the Officers and employees of the Company, and shall have all of the general power of management usually or typically vested in the office of president of a corporation and shall have such other powers and duties as may be prescribed or granted by the Board.
>
> *with*
>
> Subject to the ultimate control of the entire Board, and other limitations set forth in this Agreement, the Chairman ***shall have paramount and full responsibility and power for the general supervision, direction and control of***

> meetings of the Board and shall have all of the general powers usually or typically vested in the office of a chairman of the board of a corporation.

Thus, notwithstanding Mugica's "paramount and full responsibility" for Holdings' business and operational matters, Roccia had "paramount and full responsibility" for governance matters by virtue of correspondingly broad authority over matters at the Holdings Board level.

In sum, the trial court's interpretation of the plain language of the Holdings Operating Agreement is supported by additional provisions of the Holding Operating Agreement beyond those cited in the trial court's Order.

Defendants' various attacks on the trial court's reasoning all lack merit. Mugica argues that Roccia's presence on the Skyline Board interfered with Holdings' interests. That assertion is baseless because the appointment or removal of Roccia from the Skyline Board would not affect Mugica's supervision, direction and control of the business and operations of Skyline. *Cf.* OB at 33–35. Skyline is completely controlled by Windpower I by virtue of Windpower I's absolute voting control and right to appoint the majority of Managers to the Skyline Board. Thus, Roccia's presence on the five-member Skyline Board presents no obstacle to Mugica accomplishing anything relating to the activities of Skyline because Windpower I retains control of the Board with or without Roccia. Accordingly, so long as Mugica

has the agreement of Windpower I and its appointees, Roccia's presence on the Skyline Board, as a matter of law, cannot impair Mugica's operational authority.[6]

Defendants contend that Mugica's powers are not limited to those that typically adhere to a CEO or President, because the list of Mugica's responsibilities in Exhibit A to Mugica's Employment Agreement uses the conjunctive "and," and includes both the "paramount and full responsibility and power" language, and the phrase "such other powers and duties" as prescribed by the Holdings Board. OB at 29. As the Court of Chancery correctly noted, the Exhibit A items are not a grant of authority, instead, they are limitations on whatever authority was delegated. Op. 17–18, ¶13. Thus, Exhibit A does not shed light on the scope of authority delegated to Mugica.

Further, Defendants argue for an unreasonable reading of Mugica's Employment Agreement. OB at 28–32. Defendants' proposed interpretation of the agreement would fundamentally alter the equal powers granted in the Holdings and Managing Member Operating Agreements. It would, in effect, grant Mugica unilateral authority to act on all matters where he and Roccia disagree. Mugica's suggestion that Roccia would retain the ability to reverse Mugica's actions at the

[6] For that same reason, Mugica's argument that the Holdings Board must use commercially reasonable efforts to refrain from involving itself with or directing Mugica's discharge of its duties and responsibilities is irrelevant.

Holdings' Board level is disingenuous. OB at 21, 35 n.8. The even split of authority between Roccia and Mugica on the Holdings Board means that on any issue where there was disagreement, there would be an impasse at the Holdings Board. The result of Defendants' proposed interpretation of Mugica's Employment Agreement would be that Mugica would, in effect, have unilateral power to pursue any and all actions as President/CEO and the Board would be powerless to stop him. In that scenario, Roccia's only remedy would be litigation. A grant of such unilateral control to Mugica would fundamentally contradict the express contractual provisions of the Holdings Operating Agreement that (i) grant to the Holdings Board the power to manage, operate and control the business and affairs of the company (A179–A180, §8.01), (ii) grant Roccia and Mugica equal representation and authority on Holdings' Board (A180, §8.02), and (iii) make the powers of the President/CEO subject to the ultimate control of the Board (A183–A184, §8.09). It would also render the Managing Member Operating Agreement's deadlock provision superfluous (A115–A118, §§7.01–7.07), as Mugica could act unilaterally with the knowledge that he can prevent Board reversal. Defendants' proposed interpretation would "conflict[] with the agreement's overall scheme or plan" in violation of Delaware law on contract construction. *GMG*, 36 A.3d at 779.

Defendants' *expressio unius est exclusion alterius* argument lacks both relevance and merit. OB at 28–29. First, Defendants do not explain what was

expressed and correspondingly what was thereby excluded. Their argument appears to be that the Authority Clause language expressly grants "all" powers and duties to manage and control the affairs of Holdings to Mugica so as to exclude the retention of *any* authority by the Board. That argument directly conflicts with the language of the Authority Clause, which makes the CEO's power "[s]ubject to the ultimate control of the Board" and restricts the "paramount" power to the "business and operations" of Holdings, which power, as the Vice Chancellor recognized, does not extend to appointment of directors of affiliates. Op. 13–17, ¶¶5–11. Further, had the intent been to grant "all" responsibility and power to Mugica, there were much easier ways to do that. For example, the Authority Clause could have said "all responsibility and power to govern and manage Holdings is hereby delegated by the Board to the CEO who shall have plenary authority to manage the company." That is not what it says. Instead, the language is clear that the Holdings Board retains ultimate, plenary authority, while any grants of authority to the CEO are limited by various clauses and adjectives that tie them to operational matters.

Further, the Authority Clause provides for the additional grant of "powers and duties as may be prescribed or granted by the [Holdings Board]." Op. 9, ¶J (*quoting* the Authority Clause). If the grant of authority to the CEO was truly plenary as Defendants argue, then the latter clause would be completely superfluous. If the

Board had already granted all powers and authority to the CEO, there would be no need or ability for the Board to prescribe or grant other powers and duties.

Defendants suggest that categories 1 and 2 of the four branches of delegated authority identified by the trial court overlap completely, rendering the inclusion of one of them superfluous. OB at 30; Op. 13, ¶5. Defendants then offer no explanation or authority to support their assumption that the terms "paramount and full responsibility and power for . . . the business and operations of [Holdings]" is a synonym for "the general power of management usually or typically vested in the office of president." Thus, there is no basis for Defendants' suggestion that inclusion of one renders the other superfluous. And, it is not unusual for lawyers to include terms that arguably overlap or are redundant in certain ways (*e.g.*, "cease and desist," "include, but are not limited to"). *See* Bryan A. Garner, *Legal Writing in Plain English*, at 55 (2d ed. 2013).

Regardless, the Court of Chancery independently considered each of the four branches using factors that were not redundant. Op. 14–16, ¶¶7–10. As the trial court recognized, the paramount language (category 2 of the trial court's four branches) is limited by language of the same clause recognizing that the grant of authority is only as to the "business and operations" of Holdings. Op. 15–17, ¶¶8–10. The plain meaning of "business and operations" refers to operational matters relating to the annual budget and business plan, but does not extend to "corporate

governance matters." Op. 16, ¶9. Separately, the Court determined that the grant of general powers typically vested in a president (category 1) simply grants "authority to bind the company in the ordinary course of business." Op. 14, ¶6. As the Court noted, "usual and ordinary business" is defined in the Holdings Operating Agreement to cover the acquisition, development, building, operating and managing of renewable energy assets. Op. 14, ¶7. Notably, it does not refer to the appointment or removal of directors of affiliated companies, which are "neither 'usual and ordinary' nor part of Holdings' core business." *Id.* Thus, the trial court's analysis was premised on specific distinctions between the general-powers-of-a-president clause, and the business-and-operations clause, and none of those clauses are made superfluous by the Court of Chancery's holding.

3. Removing Roccia Was Not Part of the Business and Operations of Holdings

Defendants argue that the Court of Chancery erred because it purportedly failed to recognize that Holdings is a holding company and that a holding company's "operations" are limited to managing ownership rights in affiliated entities. OB at 33–35. That argument fails for multiple reasons.

First, Defendants did not raise this argument below. In briefs and argument below, Defendants did not affirmatively state or note that Holdings is a holding company or mention any implications of its status as one. In their brief below, Defendants noted that Transatlantic Ultiner, the Managing Member of Holdings, is

a holding company (*see* A39) but they never expressly referred to or described Holdings as being a holding company. At the summary judgment hearing below, Defendants likewise referred to the Managing Member as a holding company, and then went on to note that "[t]he question is what is the management structure at the [Holdings] level. And what the parties decided is that because Mugica has been a CEO of a major renewable energy company for over a dozen year and has a ton of operational knowledge and understands the industry, whereas Mr. Roccia did not have that experience, that Mr. Mugica would be fully in charge of [Holdings]." A719-A720. Defendants never referred to Holdings being a holding company. Rather, Defendants noted that Mugica's operational experience was relevant to his position at *Holdings*. *See* A89, ¶2 (Mugica's prior experience was "focused on wind and solar development, operations, and power, and ***through [a] subsidiary***, [he] led Iberdola S.A.'s renewable energy business in North America") (emphasis added)); A91, ¶¶8–9 (Mugica stating he was named President and CEO of Holdings because of his experience relative to Roccia who had "no experience operating a renewable energy company"). If Holdings were conducting no operations because it was "only" a "holding" company, as Defendants suggest, Mugica's operational experience would be irrelevant to his position at Holdings, and the Authority Clause would have been completely unnecessary and meaningless. Thus, Defendants' argument fails both because it was not raised below and therefore cannot be raised

on appeal (Supreme Ct. R. 8; *Clark v. Clark*, 47 A.3d 513, 518-19 (Del. 2012)), and, because the argument makes no sense, given that Mugica's operational experience would not be relevant at the holding company level.

Second, whether Holdings conducts its operations directly or indirectly is irrelevant. As the trial court recognized, the business of Holdings is "identifying, acquiring[,] … developing, building, operating and managing renewable energy assets." Op. 14, ¶7. Defendants argue that because Holdings does not engage in those activities "directly," they cannot be part of Holings' operational activities. OB at 33–34. Nothing in the Holdings Operating Agreement mandates that these enumerated activities must be carried out directly and not through affiliates and subsidiaries. Instead, the Holdings Operating Agreement foresees and recognizes that Holdings' renewable operations are *likely* to be carried out through subsidiaries or affiliates. *See, e.g.*, A182, §8.07 (noting that directors of Holdings could not hold equity in controlled or non-controlled subsidiaries of the company). In fact, Holdings does directly identify and acquire renewable energy assets. That is what it did in investing in Skyline. Defendants' new, semantic argument elevates form over substance and lacks merit. Holdings also "operates and manages" the relevant assets through its status as the Asset Manager of Skyline under the terms of the Management Services Agreement, and Mugica's employment as Skyline's CEO

derivatively through his employment with Holdings. *See, e.g.*, A363; A255; A307, §7.7(a); A314, §8.3(a).

4. The Court of Chancery Correctly Recognized That Removal of a Director is Not Operational but Rather Implicates Governance Matters

The Court of Chancery's reliance on *Miramar Police Officers Retirement Plan v. Murdoch,* 2015 WL 1593745 (Del. Ch. Apr. 7, 2015) was appropriate. *Cf.* OB at 35–36. As the trial court correctly noted, both Holdings and Skyline have "corporation-like management structures." Op. 2–3, ¶B. Further, while the Court recognized that Holdings could have delegated any or all powers to Mugica, it chose instead to grant limited authority to Mugica "analogized to the authority held by a corporate officer in the same position." Op. 11, ¶3. Therefore, it was appropriate for the Vice Chancellor to consider analogous corporate law concepts when analyzing the nature of Mugica's attempted removal of Roccia as a member of the Skyline Board. Nothing in the Vice Chancellor's analysis was inconsistent with any provision of the Skyline Operating Agreement.

Removal of a director of a subsidiary, who is also a director and beneficially owns and controls 50% of the voting power of the parent company, is not within the normal scope of an officer's authority. A survey of Delaware corporation law shows that the removal of a director is not included in the "general supervision, direction and control of the business and operations" or the "general powers of management

usually or typically vested in the office of president of a corporation." Op. 9, ¶J; *id.* at 13–14, ¶¶5–6 (*quoting* the Holdings Operating Agreement and Mugica's Employment Agreement). For decades, the only authorized mechanism to remove a director of a Delaware corporation (outside of death or resignation) was an affirmative vote or action by written consent of persons owning sufficient shares of the corporation's stock to constitute a voting majority, with the added requirement of "cause" for removal of any member of a classified board (subject to exceptions involving the certificate of incorporation or cumulative voting). 8 *Del. C.* § 141(k).[7] Under Delaware law, even a majority or near-unanimous vote of the board of directors of a Delaware corporation cannot validly remove one of the corporation's directors. *See Solstice Cap. II, L.P. v. Ritz*, 2004 WL 765939, at *1 & n.13 (Del. Ch. Apr. 6, 2004); *see also Ross Sys. Corp. v. Ross*, 1993 WL 49778, at *17 (Del. Ch. Feb. 22, 1993) (denying request to remove director on grounds of fraud, and noting the lack of "authority recognizing any power of this Court to grant such relief" and that "[t]he only persons empowered to remove a director are the corporation's shareholders."), *superseded by statute in* 8 *Del. C.* § 225(c); *id.* at *18 (holding "[t]he

[7] Thus, widely-held corporations lacking audited financial statements (and, therefore, the ability to call a special meeting of stockholders under SEC regulations) had no means by which to remove an allegedly malfeasant director.

Court lacks the power to grant the relief being requested" to remove a director of the corporation).

In 2009, Section 225(c) of the Delaware General Corporation Law was amended to allow removal other than by stockholder action through a judicial proceeding in the Court of Chancery, on grounds of a felony conviction or a breach of the duty of loyalty.[8] Even that amendment, however, did not authorize the immediate removal of a director through board action (let alone unilateral action by an officer). Indeed, the amended statute requires that before the Court of Chancery may remove a director, a finding of fact must have been made in a prior proceeding, either: (i) a prior felony conviction, or (ii) "a prior judgment on the merits by a court of competent jurisdiction that 1 [sic] or more directors has committed a breach of the duty of loyalty in connection with the duties of such director or directors to that corporation." 8 *Del. C.* § 225(c).[9] The Court of Chancery correctly concluded that removing a director is outside of the ordinary course of business. Op. 14, ¶7.

Skyline's Operating Agreement also establishes a Board of Managers that is the functional equivalent of a board of directors of a Delaware corporation. A302, §7.1(a) ("[T]he Company and each of the Project Companies . . . shall be governed

[8] 77 Del. Laws, c. 14, §10 (2009).

[9] This section also notes that a director facing removal has certain affirmative defenses.

by a board of Managers of the Company . . . [which] shall have the power and authority . . . to manage and administer the business and affairs of the Company . . .”). Delaware law recognizes that “directors manage the corporation and each has a somewhat independent status during his term of office.” *Campbell v. Loew’s, Inc.*, 134 A.2d 852, 861 (Del. Ch. 1957). The *Campbell* Court further noted the “possibility for abuse” if “substantial safeguards” are not afforded to a director in connection with any attempt to remove him. *Id.* While the *Campbell* case involved an attempted removal for cause, the “possibility for abuse” recognized by that Court in the context of a contentious control fight and proxy contest also exists here, where Mugica seeks to use the office of President and CEO to further his interests as a beneficial owner of interests in Holdings to the detriment of Roccia.

II. MUGICA'S ATTEMPTED REMOVAL OF ROCCIA WAS INVALID BECAUSE IT VIOLATED THE TERMS OF THE SKYLINE OPERATING AGREEMENT

A. Question Presented

Did Mugica's attempted removal of Roccia violate the terms of the Skyline Operating Agreement? This issue was raised below but not decided by the Court of Chancery because it was not necessary to the ruling of the trial court. Op. 6, ¶G; *id.* 10, ¶2.

B. Scope of Review

As previously discussed, this Court reviews issues of contract interpretation and a trial court's decision to grant summary judgment *de novo*. *See, e.g.*, *Emerald Partners*, 726 A.2d at 1219; *GMG*, 36 A.3d at 779.

While the trial court did not address whether Skyline Operating Agreement granted Holdings the power to remove Roccia from the Skyline Board and assumed *arguendo* that it did, Roccia agrees with Appellants that this Court has the power to decide the issue. *Telxon*, 802 A.2d at 262; *see also Hercules Inc. v. Leu Tr. & Banking (Bahamas) Ltd.*, 611 A.2d 476, 484 (Del. 1992) (having noted that the trial court's analysis was too narrow, deciding issues based on the full record despite the trial court's reliance on partial record); OB at 38.

C. Merits of the Argument

Holdings is a party to the Skyline Operating Agreement and therefore bound by its provisions. A338. Section 7.2(a) of the Skyline Operating Agreement

unambiguously prohibits Roccia's removal from the Skyline Board prior to the expiration of the three-year term unless one of two conditions occurred, neither of which was met. A304, §7.02(a). Section 7.2(a) states that "Lorenzo Roccia shall be the initial Chairman of each Board established prior to the third (3rd) anniversary of the Effective Date . . . [and] . . . ***shall not be removed*** as the Chairman of any Board, except for Cause (as defined in the Management Services Agreement) upon a unanimous vote of the Managers with respect to such Board." *Id.* (emphasis added). Section 7.2(a) also requires the Chairman of the Board to be a Manager. *Id.* Because the purported removal of Roccia occurred prior to the end of his three-year term on February 23, 2021, that removal would have required a unanimous vote by the Skyline Managers supporting removal for Cause. It is undisputed that there was no unanimous vote (nor any vote) by the Skyline Board to remove Roccia, with or without Cause.

Defendants suggest that because Roccia was both the Chairman of the Skyline Board, and "a Manager" of that Board, Holdings could accomplish his removal as Chairman without Cause or a unanimous Manager vote, notwithstanding Section 7.2(a)'s express prohibition of such action. According to Defendants, Holdings could achieve such result by choosing to comply with Section 7.6(a)'s general procedural requirement of written notice for removing a "Manager," without also complying with Section 7.2(a)'s more specific language concerning the removal of

the "Chairman." OB at 39–41; A306, §7.6(a). As explained below, Defendants' proposed harmonizing of Sections 7.2(a) and 7.6 is wrong because it elevates a general provision over a more specific provision and renders meaningless Section 7.2(a)'s mandatory and unambiguous requirements.

To remove Roccia as Chairman of Skyline during the first three years of Roccia's term, the purported removal was required to comply with both Section 7.6(a)'s general requirement of written notice, and Section 7.2(a)'s specific requirements of Cause and a unanimous vote of Skyline's Managers. Section 7.6(a), which requires a written notice for the removal of "any" Manager, is a general provision. Section 7.2(a), which mentions Roccia specifically by name and mandates that he "shall not be removed as the Chairman" without Cause and a unanimous Manager vote, is the specific provision. "Specific language in a contract controls over general language, and where specific and general provisions conflict, the specific provision ordinarily qualifies the meaning of the general one." *DCV Holdings, Inc. v. ConAgra, Inc.*, 889 A.2d 954, 961 (Del. 2005). The word "shall" also expresses in unambiguous language the mandatory nature of Roccia's three-

year term.[10] *Zurich Am. Ins. Co. v. St. Paul Surplus Lines, Inc.*, 2009 WL 4895120, at *7 n.55 (Del. Ch. Dec. 10, 2009).

In addition, a party to a contract cannot take action permitted under one provision of a contract, if that action cannot—as a matter of law, definition, or common sense—be taken without causing that party's violation of another provision of the contract, absent an express exception. *Cf. GMG*, 36 A.3d at 779 ("In upholding the intentions of the parties, a court must construe the agreement as a whole, giving effect to all provisions therein. The meaning inferred from a particular provision cannot control the meaning of the entire agreement if such an inference conflicts with the agreement's overall scheme or plan." (internal quotation marks and citation omitted)).

Similarly, "[u]nder general principles of contract law, a contract should be interpreted in such a way as to not render any of its provisions illusory or meaningless." *Sonitrol Holding Co. v. Marceau Investissements*, 607 A.2d 1177, 1183 (Del. 1992). Interpreting Section 7.6(a) to allow Holdings to remove Roccia as a Manager without Cause or a unanimous Managers vote, even though doing so necessarily results in a violation of Section 7.2(a), renders Section 7.2(a)

[10] The mandatory three-year term also was separately negotiated. *See* A93–A94, ¶14 (noting that the three-year term provision of Section 7.2(a) was inserted at the request of Roccia).

meaningless. This is not a parsed reading of the Skyline Operating Agreement; the first sentence of Section 7.2(a) states "[t]he Chairman . . . shall be a Manager," and the third and fourth sentences that follow that sentence state specifically that Roccia is to be that Chairman for three years unless one of two enumerated events occurs. Removal of Roccia from the Board is not one of Section 7.2(a)'s enumerated events allowing his removal as Chairman, and its express exclusion "speaks volumes." *Active Asset Recovery, Inc. v. Real Estate Asset Recovery Servs., Inc.*, 1999 WL 743479, at *11 (Del. Ch. Sept. 10, 1999) (citing the rule of *expressio unius est exclusio alteris*). Defendants effectively ask the Court to write into Section 7.2(a) an additional enumerated event allowing removal, "except as provided in §7.6" and/or qualification to the prohibition on removal, "As to removal by members other than the appointing member." *See* OB at 42.

By contrast, prioritizing Section 7.2(a)'s application over Section 7.6(a) leaves the latter provision with meaning for several reasons, including: (i) any removal of a Manager or Board Observer requires written notice and cannot be accomplished orally, (ii) Section 7.6(a)'s default procedure for removal continues to apply to any of Holdings' designees other than Roccia, including any Manager or Board Observer that might be appointed within Roccia's initial three-year term, and (iii) after the expiration of Roccia's term as Chairman, unless the Skyline Operating Agreement is amended, he can be removed by Holdings under Section 7.6(a)'s

default procedure (assuming such removal comports with other relevant agreements).

This is the only reasonable interpretation of the Skyline Operating Agreement. As summarized in §203 of the Restatement (Second) of Contracts:

> In the interpretation of a promise or agreement or a term thereof, the following standards of preference are generally applicable:
>
> > (a) an interpretation which gives a reasonable, lawful, and effective meaning to all the terms is preferred to an interpretation which leaves a part unreasonable, unlawful, or of no effect;
> >
> > (b) express terms are given greater weight than course of performance, course of dealing, and usage of trade, course of performance is given greater weight than course of dealing or usage of trade, and course of dealing is given greater weight than usage of trade;
> >
> > (c) specific terms and exact terms are given greater weight than general language;
> >
> > (d) separately negotiated or added terms are given greater weight than standardized terms or other terms not separately negotiated.

Restatement (Second) of Contracts § 203 (1981) (emphasis added). There is a common sense rationale for giving specific terms priority over general terms, as the Restatement explains.

> *e. General and specific terms.* People commonly use general language without a clear consciousness of its full scope and without awareness that an exception should be made. Attention and understanding are likely to be in

> better focus when language is specific or exact, and in case of conflict the specific or exact term is more likely to express the meaning of the parties with respect to the situation than the general language. If the specific or exact can be read as an exception or qualification of the general, both are given some effect, in accordance with the rule stated in Subsection (a). But the rule yields to manifestation of a contrary intention.

Id. §203, cmt. e (emphasis added).

Interpreting Section 7.2(a) in the way Defendants suggest would violate both the principle that general contract language yields to more specific language and the principle that no provision should be rendered meaningless. It also would conflict with the principle stated in Restatement §203 subparagraph (d) because the three-year term provision was a separately negotiated term.

Defendants' final argument asks the Court to import into alternative entity law the concept that stockholders elect and remove directors, *see* OB at 39–40, 42–43, while ignoring the fundamental principle that LLCs are creatures of contract with maximum effect given to the principle of freedom of contract. 6 *Del. C.* §18-1101(b); *see also* 6 *Del. C.* §17-1101(b). Members of LLCs and LLCs themselves can freely agree to contractual provisions and restrictions that corporations may not. Defendants offer no policy justification for subjecting LLCs to this principle of corporation law. Unlike the Skyline Operating Agreement's express reference to the powers of a corporation's president when defining Mugica's power, the agreement

unambiguously prohibits Roccia's removal without Cause and a unanimous Manager vote. No further analysis is required.

CONCLUSION

Plaintiffs respectfully request that this Court affirm the Court of Chancery's Order and Final Judgment in all respects.

PRICKETT, JONES & ELLIOTT, P.A.

By: */s/ Bruce E. Jameson*

Bruce E. Jameson (#2931)
John G. Day (#6023)
Stephen D. Dargitz (#3619)
Elizabeth Wang (#6620)
1310 N. King Street
Wilmington, Delaware 19801
(302) 888-6500

Attorneys for Appellees Lorenzo Roccia and Transatlantic Group Partners LLC

Dated: May 20, 2021

CERTIFICATE OF SERVICE

I, Bruce E. Jameson, do hereby certify on this 20th day of May, 2021, that I caused a copy of Appellees Lorenzo Roccia and Transatlantic Group Partners LLC's Answering Brief to be served via File & Serve*Xpress* upon counsel as follows:

Raymond J. DiCamillo, Esq.
Megan E. O'Connor, Esq.
Richards, Layton & Finger, P.A.
920 North King Street
Wilmington, Delaware 19801

/s/ Bruce E. Jameson
Bruce E. Jameson (#2931)