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Case Number 36,2023

IN THE SUPREME COURT OF THE STATE OF DELAWARE

GGH-RE INVESTMENT PARTNERS LIMITED and CEZARY JARZABEK,	)	
Defendants-Below/Appellants/ Cross-Appellees,	)	No. 36, 2023
v.	)	
GOLUB CEE INVESTORS LLC,	)	
Plaintiff-Below/Appellee/Cross-Appellant.	)	

APPELLANTS' OPENING BRIEF

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Dated: March 28, 2023

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NATURE OF THE PROCEEDINGS

This is an appeal arising from a September 20, 2021, Chancery Court action seeking a declaration, as provided for under 6 DEL. C. § 18-110, that Appellee Golub CEE Investors LLC ("Golub") is the rightful Operating Managing Member ("OMM") of the Nominal Defendant, Golub Gethouse Realty Company LLC ("GGRC"). GGRC is a Delaware LLC owned in equal measure by Appellee Golub Cee Investors LLC (a Delaware LLC) and Appellant GGH-RE Investment Partners Limited (a Cypriot entity) ("GGH-RE") AO: 110 at ¶ 3.

On October 26, 2021, Delaware counsel appeared on behalf of the Appellants. AO: 5. Thereafter, on December 1, 2021, that counsel withdrew. AO: 6. The Chancery Court scheduled several hearings during the period that Appellant GGH-RE was unrepresented. For approximately two months the Appellants searched for replacement counsel. During that period Cerzarek Jarząbek ("Mr. Jarząbek") appeared at various hearing on behalf of both Appellants. The Chancery Court informed him that he could not represent GGH-RE as it was a corporation. At each hearing the Court implored GGH-RE to secure Delaware counsel.

On February 4, 2022, the Chancery Court convened a hearing on Golub's Motion for Default Judgment. AO: 11. The evening prior to that hearing GGH-RE secured Delaware counsel (current counsel). AO: 11-12. At the hearing the

Chancery Court denied Golub default judgment and instead imposed an adverse inferences sanction upon both Mr. Jarząbek and GGG-RE. In addition, and with one exception, the Chancery Court closed the Appellants' right to conduct discovery stating:

> I am going to order you to go to trial on the current discovery record plus any adverse inferences that the plaintiff proposes, after I consider them and enter them, at the end of next week or the beginning of the following. So the 11th or 14th. I imagine it will be pretty short given the record to date. And Mr. Conaway can come prepared to argue the merits of Mr. Jarzabek's case.

Operating Agreement ("OA") -416. The Chancery Court had abused its discretion by imposing adverse inferences upon Mr. Jarzabek individually. Nonetheless, to his detriment, it did. The Chancery Court further abused its discretion by imposing the combination of sanctions based upon GGH-RE's inability to secure Delaware counsel.

Trial occurred on June 30, 2022, from 9:15 am until 12:30 pm. Trial was continued on July 1, 2022, commencing at 9:00 am and lasting until 12:30 pm. Trial reconvening at 2:30 pm and concluded at 4:50 pm. Six witnesses testified. Four of those witnesses were experts on foreign law. The other two witnesses were representative of the Golub and Appellants. The Appellant's only factual witness, Mr. Jarząbek, testified on direct for 13 minutes.

Following trial, on September 14, 2022, the Chancery Court, by oral decision, erroneously concluded that Golub satisfied their burden of proof and was,

accordingly, entitled to a declaration that Golub was the sole OMM of GGRC. Exhibit C. In reaching this result the Chancery Court accepted Golub's evidentiary proffer to conclude that the Appellants had, in fact, breached the Second Amendments to the Operating Agreement. On September 21, 2022, Golub filed its motion for reconsideration of the Chancery Court's decision denying it an award of attorney's fees.

In addition to granting Golub declaratory relief, the Chancery Court denied Golub's request for an award of attorney's fees. On September 21, 2022, Golub file a motion for reconsideration of the fee award. On January 3, 2023, the Chancery Court denied Golub's request for reconsideration. This appeal was filed February 2, 2023.

SUMMARY OF THE ARGUMENT

1. **Foreign Law**. The Chancery Court erred by ignoring controlling and undisputed legal obligations imposed by the Republics of Poland and Cyprus upon directors of companies registered therewith and operating therein. Instead, the Chancery Court concluded that the obligations of the Company's OA, including amendments, could be enforced under Delaware law to the exclusion of Polish and Cypriot law.

Both Polish and Cypriot law require a company director to act in the best interests of the company. In this scheme, the director's fiduciary duties are owed, not to the owners/shareholders, but rather solely to the company. Breach of this duty can result in criminal and civil prosecution directly against a director. *AO*: 283 at n. 13 and 14 (*citing Polish Commercial Companies Code* ARTICLE 292, § 1, for imposition of civil penalties resulting from breach a director's fiduciary duties, and ARTICLE 296, § 1, for imposition of criminal penalties resulting said breach).

This duty is further circumscribed in that Polish/Cypriot directors are not obligated to confer or seek advice from any entity that is not a direct owner/ shareholder of the company.[1] Indeed, an indirect owner/shareholder lacks the right to command a Polish or Cyprus director to act upon the indirect owner's direction.

[1] Both Polish and Cypriot law offer a legal means to change the paradigm of a director's fiduciary duties to owners/shareholders. None of those mechanisms was deployed in any of the Polish or Cypriot companies' governing documents.

This Court should reverse the Chancery Court's legal decision.

2. **Lacking Evidence**. The Chancery Court erred by granting Golub relief upon a facially empty evidentiary record. The Court took this step despite the fact that (1) Golub's fact witness, Michael Glazer ("Mr. Glazer"), testimony was inconsistent with Golub's own documentation; (2) Mr. Jarząbek's trial and deposition was directly in conflict with Mr. Glazer's testimony; (3) The Chancery Court made no credibility finding or conclusion as to either witness; (4) Golub's evidentiary proffer was limited a one word answer – "yes" – in response to a question about the accuracy of allegations in the complaint.

The Chancery Court further concluded that Mr. Jarząbek breached the Second Amendments to the Operating Agreement ("2-OA") because he failed to appoint replacement directors for any of Cyprus company. This conclusion ignored the unrebutted fact that Mr. Jarząbek could not appoint a Cypriot company director if Golub never nominated a director for appointment. Hence, in the face of Golub's failure to fulfill a prefatory obligation, Mr. Jarząbek had not obligation to appoint a director. Accordingly, he could not be in default.

Finally, the OA limits the OMM's ability to act on certain matters undertaken by the "Company." Among other things, not relevant here, the OA requires that the OMM cannot act without consent of members "if the Company provides services." Golub did not offer a shred of evidence that the Company

provided any service. This evidentiary void further undermines the Chancery Court decision.

Collectively, these evidentiary shortcomings fail the Chancery Court's decision is not supported by the record nor the product of an orderly and logical deductive process.

3. Abuse of Discretion. The Chancery Court's imposition of adverse inferences coupled with a close of discovery against the Appellants amounted to an abuse of discretion. There is no doubt that the Appellants were told, numerous times, that Delaware counsel was required to represent GGH-RE. In the usual case such admonitions, if ignored, should have consequences. Here, however, both GGH-RE and Mr. Jarząbek are foreign nationals with no meaningful experience with Delaware law or courts. While this fact should be consequential, other facts bolster this conclusion. Notably, at no point did the Chancery Court conclude that Mr. Jarząbek acted maliciously, or with intent to delay, to obstruct, or otherwise with a culpable metal state. These observations coupled with Mr. Jarząbek's unfamiliarity with Delaware law, especially the concept of a summary proceeding, should not have resulted in one of the most serious combination of sanctions short of default judgment.

STATEMENT OF FACTS

This action seeks a declaration as provided for under 6 DEL. C. § 18-110 that the Plaintiff, Golub, is the sole OMM of the Company. The Company is owned in equal part by Golub and GGH-RE. GGH-RE is wholly owned by Mr. Jarząbek.

This is the second action between these same parties. In November 2020, Golub filed a nearly identical action against the same parties seeking the same general relief. The First Action was settled, without prejudice. The settlement resulted in amendments to the Company's Operating Agreement.

A. Nominal Defendant's History and Pre-Litigation Operating Agreement.

The Company was formed in 2009. Contemporaneously therewith an OA was executed. The OA defines and describes the expected elements of a Delaware LLC. In the introductory paragraph, the following basic definition of "company" appears:

> This Limited Liability Company Agreement (this "**Agreement**") of **Golub GetHouse Realty Company LLC**, a Delaware limited liability company ("**Company**"), is made and entered into as of the 12 day of January, 2009, between **Salimondi Holdings Limited**, a Cyprus limited liability company ("Salimondi") and **Golub CEE Investors LLC**, a Delaware limited liability company ("Golub") (Golub and Salimondi are each referred to individually herein as a "**Member**" and are referred to jointly herein as the "Members").

AO: 67 (bold original). As expected, the word "company" appears throughout the OA.

At § 4.1, the Company purpose is described as follows:

> **Purposes**. The purposes of the Company are to acquire, develop, own (directly or indirectly), operate, make investments in, finance and ultimately sell Projects or any part thereof or interest therein; to provide development, marketing, sales, property management, asset management, construction supervision, leasing and other services for Projects, whether owned by the Company or third parties; and making prudent interim investments of Company funds. Except as specifically limited or prohibited by this Agreement, the Company is empowered to perform such actions and engage in such activities consistent with, useful or necessary to carry out the purpose of the Company.

AO: 71. The OA limits the Company's operations to a geographical area described as "Poland, Czech Republic, Slovakia, Bulgaria, Romania, Hungary, Ukraine and Russia." AO: 70. The OA further limits the Company's purpose to "Projects" – another defined term.

> **Project**. Any residential, office, retail, or commercial or project or land held for the development thereof located in the Territory which is directly or indirectly acquired, developed or redeveloped by the Company or for which the Company provides any services.

Id.

Management of the Company is set out in ARTICLE 10. Section 10.1 designates appointment of a single member as an "Operating Managing Member to manage the day-to-day operations of the Project and the Company as set forth herein." AO: 79 (capitalization original). Notably, ART. 10 imposes limitations on the OMM's authority to act unilaterally. Specifically, §10.1 sets the framework for those limitations:

> The Operating Managing Member shall confer with the other Member with respect to the management and operations of the Company at

> such times as shall be mutually agreed to, including, without limitation, with respect to any Major Decision to be approved pursuant to Section 10.3. Subject to the provisions of Section 10.3, no act shall be taken, sum expended, decision made, approval granted or obligation incurred by the Company or the Operating Managing Member with respect to a Major Decision without the approval of both of the Members.

Id. Section 10.1 references §10.3 which sets out the panoply of "Major Decisions." In relevant part, that section states:

> **Major Decisions**. The Operating Managing Member shall not enter into or make any of the following actions or decisions by or on behalf of the Company ("Major Decisions") without the prior approval of all the Members:
>
> (iv) Cause the Company to borrow funds for any purpose;
>
> (v) Cause the Company to pledge any or all of the assets of the Company . . .;
>
> (x) The direct or indirect acquisition or development of a Project;
>
> (xii) The financing or refinancing of a Project, including any indemnity or guarantee thereunder . . . ;
>
> (xiv) The approval of any contract providing for aggregate payments in excess of ten thousand Euro (€10,000);
>
> (xxi) The making of a call for Capital Contributions;

B. The Corporate Structures

The organizational structure supporting the Polish and Cypriot companies is complex, to say the least. For purposes of this action, that complexity is avoidable. The only issue about the organizational structure is that, with one exception,

neither the Golub nor the Company hold direct interests in any of the Polish or Cypriot entities.[2] As such, the law of both countries, denies them any right to impose binding instructions upon a management board member.

C. Pre-Litigation Operation of the Company.

Mr. Jarząbek is a Polish citizen and the sole member of GGH-RE. As a Polish citizen, Mr. Jarząbek provided a Polish presence and, as such was in a unique position to conduct business in Poland. By agreement, Mr. Jarząbek was also sole or primary director of virtually every one of the Polish and Cypriot companies.

At trial, Mr. Jarząbek described the *modus operandi* between himself/GGH-RE and Golub.

> I was running [the business] on my own. And the way we operated is that I conferred, you know, from time to time, on a weekly or even biweekly basis, with Michael Newman and Eugene Golub. And as long as the business was going up for a while -- and it did in the past -- that was the way we operated.

TT at 287/4-9. Continuing, Mr. Jarząbek testified:

> Golub never issued any written consent, never demanded any paperwork. We were just operating on the phone. And I was running all the entities in Poland and in Cyprus, and I took the responsibility. That's how we operated.

TT. at 287/15-21.

[2] The Nominal Defendant holds a direct ownership in Golub Gethouse Realty Company Ltd, a Cyprus entity.

D. The First Action – November 12, 2020

The relationship between Golub and GGH-RE soured and on September 9, 2020, Golub sent a notice removing GGH-RE as OMM of the Company. AO: 584. The removal notice provided that "in accordance with the provisions of Section 10.2 of the [LLC] Agreement notice is hereby given, effective immediately of the cessation and removal of GGH-RE as the Operating Managing Member of the Company and the appointment of Golub [] as its replacement." *AO:* 586.

On November 12, 2020, Golub filed the first action ("First Action"). The First Action sought "injunctive and declaratory relief arising from the impermissible attempt of GGH-RE and Jarzbek to sell assets of Golub Gethouse Realty Company LLC in violation of the express terms of the Limited Liability Company Agreement of Golub Gethouse Realty Company LLC, as amended and in violation of Defendants' fiduciary duties." *AO*: 562 at ¶ 5. As in this action, the First Action sought relief pursuant to 6 DEL. C. § 18-110. *Id*. at ¶ 16.

The First Action alleged that the Defendants had:

A. Attempted to sell assets of GGRC. *Id*. at ¶1; and

B. Trying to conduct a fire sale of the Company's interest in Project Mennica. *Id*. at ¶ 9; and

C. The Appellants entered into or made decisions by or on behalf of the Company ('Major Decisions') without the prior approval of all the Members including *Id*. at ¶ 22; and

D. Jarząbek sold retail bonds to purportedly secured by an interest in

Project Mennica. *Id*. at ¶ 31.

By January 29, 2021, the parties settled their differences agreeing to certain amendments to the OA. On February 10, 2021, the First Action was dismissed, without prejudice. *AO*: 103-07.

E. Settlement – The First Action

The 2-OA changed certain definitions and required the Golub nominees to be appointed as managing board member to designated Polish or Cypriot entities. *AO*: 92-94. The 2-OA changes also modified the OA as to "Operating Managing Member," "Project" and §§ 5.1, 10.1, 10.2 and 10.8. *Id.* at 92-3.

The 2-OA, at Exhibit A, required that Golub nominees be appointed as management board members of Polish and Cypriot entities. AO: 95-112. Those management board appointments were to be documented as follows.

> (a) Minutes of the shareholder's meeting, including resolutions dismissing and appointing of the members of the management board).
>
> (b) Minutes of the shareholder's meeting in notarial deed including the resolution regarding the change of the Articles of Association indicating two persons as the minimum and maximum number of board members.
>
> (c) Filing Receipt with the National Court Registry
>
> (d) National Court Register filing

OA: 95-102.

Golub alleges that GGH-RE (a) failed to take some of the required actions,

(b) failed to deliver some of the required documents, and (c) otherwise failed to cooperate. *AO*: 118-20 at ¶¶ 33-40. Those failures prompted Golub, on August 10, 2021, to send a second notice of removal. *Id*. at 41.

F. The First Action - Golub's Need for the Second Amendments

At trial Michael Glazer, Golub's corporate representative, testified that Second Amendments were intended to make clear that:

> Golub was provided joint control of *specific entities* where management board membership was changed to have a Golub appointee, along with Mr. Jarząbek's appointee, which in his case was always himself personally; and also, to give us joint control over day-to-day operations of the operating company.

TT at 27/15-21.

In his deposition, Mr. Glazer testified that 2-OA was necessary because, in Golub's view, the OA did not give Golub control over the indirectly owned Polish and Cypriot entities and related assets.

> Q. Okay. And, again, this [Second Amendment] agreement -- well, tell us what you understood this agreement to do in general.
>
> A. It's -- the second amendment was intended to give Golub joint control of all of the constellation of companies under our joint company here, this Delaware entity for which we are looking at the second amendment; not only major decisions, but day-to-day control, jointly with GGH-RE Investment Partners, which is Mr. Jarząbek's entity.
>
> Q. Is it fair to conclude, then, that, prior to the execution of the second amendment to the operating agreement, that Golub did not have that joint control?

MR. BROWN: Objection to form.

THE WITNESS: Golub had joint control over major decisions as defined in the operating agreement.

BY MR. CONAWAY:

Q. That's not my question, sir. Did Golub have the authority to assert joint control over all of the company.

Q. My question to you is, you wouldn't have made those changes to the operating agreement if you didn't think they were in some form or fashion not present or available to you in the operating agreement as it existed before this time?

A. That's correct. That's correct.

Q. And all I'm asking, sir, is that this added an element of control that Golub understood or believed it did not have prior to this?

A. That's correct.

AO: 388/3 to 392/13.

G. The Second Action – September 9, 2020

The grace of settlement was short lived. On August 10, 2021, Golub's counsel issued a second notice of removal. *AO*: 248-51. A month later on September 9, 2020, Golub filed this action (hereafter "Second Action"). *AO*: 108-31.

Unlike the First Action, the Second Action Complaint documents specific instances of breaches allegedly committed by the Appellants. Specifically, through the Second Action Complaint and second removal notice, Golub alleges the

following:

CHART 2 – Allegations of Breach		
Para graph	**Allegation**	**Entity**
34(a)	Failing to take the steps necessary to implement the agreed-upon joint control	Bakharwal Investment LTD
34(b) 34(e) 34(g)	failing to adopt and register the required changes to the Articles of Association of	GGH MT Sp. z o.o. GGH Management 3 Sp z o.o. GGH Management 2 Sp z o.o. GGH Investments Sp. z o.o. Golub Gethouse Sp. z o.o. GGH Management 7 Sp. z o.o
34(c) 34(b) 34(f)	failing to share with Golub the minutes of the shareholders' meetings	GGH MT Sp. z o.o. GGH Management 3 Sp z o.o. GGH Management 2 Sp z o.o. Golub Gethouse Sp. z o.o. GGH Management 7 Sp. z o.o
34(h)	Failing to satisfy any of the requirements of Exhibit A of the Second Amendment with respect to	Golub Gethouse Property Fund II SA Golub Gethouse Real Estate Investment Management Sp. z o.o. GGH Management 8 Sp. z o.o. GGH Management 10 Sp. z o.o. Postepu 3 Sp. z o.o.
35(a)	Failing to install a Golub representative on the Board of Directors	GGH
35(b)	Instructing Golub Gethouse Realty Company Ltd subsidiaries to refuse to provide corporate documents relating to that company (and its subsidiaries) to Golub's appointed representative	None specified
35(c)	Failing to execute a new Engagement Letter with C. Savva & Associates Ltd.	None specified
36	Presenting as being fully authorized to act alone to represent both GGRC and GGH, which is the sole director of GGRC, in his capacity as one of three directors of GGH, without consulting with or even informing not only Golub CEE but also the remaining directors of GGH in regard to holding the shareholders meeting of Polish subsidiaries of GGRC, including, without limitation, taking such fundamental actions as amending the	

	articles of association of these subsidiaries and changing the composition of the Board of Directors of these companies	
37	Refused to take the actions required to remove the Golub name from all Cypriot and Polish entities, which removal has been demanded by Golub and is required by applicable law.	

a. Evidence Supporting Paragraph 34(a) Allegations - Joint Control

Trial testimony addressing Bakharwal Investment Ltd was limited to a single exchange narrowly limited to reviewing Golub's August 10, 2021, second notice of removal. On direct examination, Mr. Glazer merely confirmed the correctness of the allegations

> Q. If [you look under (b), it says, GGH-RE has failed to 'execute and deliver to Golub all [written] documents identified on Exhibit A' to the Second Amendment. (Section 10.8). Without limitation, GGH-RE's breaches in this regard include...: Bakharval Investment LTD ..." -- I'm not going to read through all of them -- "GGH MT, sp. z o.o.," and it goes down through each of those six. Do you see that?
>
> A. Yes.
>
> Q. To the best of your knowledge, was that true when your counsel sent those second removal notice?
>
> A. Yes.

TT at 44/3-16. In addition to Mr. Glazer's anemic testimony, Golub identified a document purporting to be a search result relating to Bakharval Investments. AO: 247. The document conveys virtually no information – not even the information source, the nature, date, purpose, or scope of the search. No testimony supported

the Bakharval Investments search document.

b. Evidence Supporting Paragraphs 34(b), (e), and (g) Allegations – Articles of Association

In the Second Action Complaint and the second removal notice, Golub alleges that GGH-RE failed to adopt and register changes to certain Articles of Association for the following six entities:

GGH MT Sp. z o.o.
GGH Management 3 Sp z o.o.
GGH Management 2 Sp z o.o.
GGH Investments Sp. z o.o.
Golub Gethouse Sp. z o.o.
GGH Management 7 Sp z o.o.

Trial testimony supporting GGH-RE's failure to adopt and register changes to the OA was limited to a single question and answer. Mr. Glazer confirmed the truthfulness of Golub's August 10, 2021, second notice of removal.

> Q. Okay. [The Second Removal Notice] also says further down, in paragraph (c), "GGH-RE has failed to cooperate with Golub CEE . . . failing to install a Golub CEE representative on the Board of Directors of Golub Gethouse Holdings Ltd . . . instructing Golub Gethouse Realty Company Ltd. (Cyprus) subsidiaries to . . . provide corporate documents relating to that company . . . to Golub CEE's appointed representatives; and . . . failing to execute a new engagement letter with C. Savva & Associates []." Do you see that?
>
> A. Yes.
>
> Q. And is this the entities that you were referring to as the holding company in Cyprus?
>
> A. Yes.

Q. And can you explain -- well, first of all, was that true when you approved sending this second removal notice?

A. Yes.

TT at 44/17 to 45/20. Outside this testimony, Mr. Glazer never utters another word in support Golub's allegation that GGH-RE failed to adopt and register changes to any of the six entities.

In glaring contrast, during Mr. Glazer's deposition, he could not confirm the truth of any of the company-related allegations in the Second Complaint. AO:

The documentary evidence, however, tells a very different story. Golub proffered records pulled from the Polish National Court Register (hereafter "NCR").[3] Those documents are:

Trial Exhibit Number	AO Page Numbers
JX33 GGH MT	132
JX34 GGH Management 3 sp. z o.o.	145
JX35 GGH Management 2 sp. z o.o.	158
JX36 GGH Management 7 sp. z o.o.	171
JX37 Golub Gethouse Property Fund II S.A.	185
JX38 Golub Gethouse Real Estate Management sp. z o.o.	196
JX39 GGH Management 8 sp. z o.o.	210
JX40 GGH Management 10 sp. z o.o.	224
JX41 Postepu 3 sp. z o.o.	236

[3] The NCR is similar to the Delaware Secretary of State in that both entities maintain information pertaining companies registered in their respective jurisdictions.

Unlike, the Secretary of State, however, the NCR provides legal protection to persons/ entities that rely upon that documentation for business transactions. *See generally, Nation Court Registry* *https://www.arch.ms.gov.pl/en/national-registers/national-court-register/general-information-on-the-national-court-register/* (last checked March 7, 2023). As reflected on the NCR web site list above, corporate documents are available for download.

The Second Action Complaint, the second removal notice and Mr. Glazer's trial testimony (*TT* at 44/17 to 45/20) assert that GGH-RE failed to complete and register 2-OA changes to various companies. As a consequence, GGH-RE breached the 2-OA Exhibit A obligations. The Trial Exhibit documents listed above - Golub's own exhibits - prove otherwise.

As reflected below, copied from AO:134 at Part1, on line 3, being a document filed with the NCR, the entity name, highlighted in yellow, is confirmed to be GGH MT Sp. z .o.o. *Contrary to Mr. Glazer's testimony*, this NCR filing and another, discussed below, unequivocally confirm that GGH-RE satisfied the 2-OA Exhibit A requirement for GGH MT Sp, z.o.o. This documentary evidence unequivocally rebuts Mr. Glazer's trial testimony that GGH-RE breach Exhibit A as to GGH MT Sp, z.o.o. Highlighted in yellow below is confirmation of the entity:

Part 1

Section 1 – Details of the entity			
Number and name of field	Entry no.		Contents
	entered	deleted	
1. Legal form	1	-	PRIVATE LIMITED LIABILITY COMPANY [POLISH: *SPÓŁKA Z OGRANICZONĄ ODPOWIEDZIALNOŚCIĄ*]
2. REGON (statistical)/NIP (tax identification) number	2	3	REGON: ---, NIP: 7010382633
	3	5	REGON: 146715786, NIP: 7010382633
	5	-	REGON: 146715786, NIP: 7010382633
3. Name under which the company operates	1	-	GGH MT SPÓŁKA Z OGRANICZONĄ ODPOWIEDZIALNOŚCIĄ

The chart organizes information by category: "Entry no.," "Date of Entry," and "Description." On the next page, under Entry Nos: 14-16, highlighted in yellow, appear three entries all bearing the Description: CHANGE OF DATA IN THE REGISTER. The date entries range from January 29, 2021, to August 31, 2021.

Entry no.	14	Date of entry	29 January 2021
Description		CHANGE OF DATA IN THE REGISTER	
Case no.		WA.XII NS-REJ.KRS/2107/21/55	
Identification of the court		DISTRICT COURT FOR THE CAPITAL CITY OF WARSAW IN WARSAW, 12th COMMERCIAL DIVISION OF THE NATIONAL COURT REGISTER	
Entry no.	15	Date of entry	11 March 2021
Description		CHANGE OF DATA IN THE REGISTER	
Case no.		WA.XII NS-REJ.KRS/13909/21/743	
Identification of the court		DISTRICT COURT FOR THE CAPITAL CITY OF WARSAW IN WARSAW, 12th COMMERCIAL DIVISION OF THE NATIONAL COURT REGISTER	
Entry no.	16	Date of entry	31 August 2021
Description		CHANGE OF DATA IN THE REGISTER	

The "Entry No." serves as a reference tag. For example, Entry No. 14 reveals that on January 29, 2021, a filing with the NCR resulted in a change of data in the register.

On *AO*: 132, under Section 4, appears the following entry:

4	14	-	11 JANUARY 2021, NOTARY'S FILE A NO. 211/2021, NOTARY TERESA DĘBSKA-GRELUS, NOTARY'S OFFICE IN WARSAW, AMENDMENT: §17 OF ARTICLES OF ASSOCIATION

This notation reflects that on January 11, 2021, pursuant to Entry No. 14, § 17 of GGH MT Sp. z .o.o.'s Articles of Association were amended. While the NCR docket does not detail the nature of the § 17 amendment, that information appears

in a Notarial Deed. *AO*: 252-62 (Exhibit JX86 at trial). The Deed is the document referenced in the NCR docket entry. Under the heading "*Subsection I, Details of members of the body*" appear the following chart entries.

No.	Number and name of field	Entry no.		Contents
		entered	deleted	
1	1. Last name/ Name or legal name	1	16	JARZĄBEK
	2. Forenames	1	16	CEZARY TADEUSZ
	3. PESEL/REGON number	1	16	77071200859
	4. KRS (National Court Register) number	-	-	******
	5.Position in the representing body	1	16	PRESIDENT OF THE MANAGEMENT BOARD
	6. Has the management board member been suspended from duty?	1	16	NO
	7. Date by which the member is suspended	-	-	------
2	1. Last name/ Name or legal name	3	14	POLAKOWSKI
	2. Forenames	3	14	PIOTR SZYMON
	3. PESEL/REGON number	3	14	83081100410
	4. KRS (National Court Register) number	-	-	******
	5.Position in the representing body	3	14	MEMBER OF THE MANAGEMENT BOARD
	6. Has the management board member been	3	14	NO

The entry reveals that Piotr Szymon Polakowski was deleted as a member of Management Board. On the next page, *AO*: 138, Phillip Radziwill was appointed a member of the Managing Board.

The NCR docket (AO: 129-141, JX 33 at trial) combined with Notarial Deed establish that GGH-RE complied with its obligations under Exhibit A. The chart below illustrates the same results for other entities.

JX Number	Entity	AO Page Number
33	GGH MT sp. z o.o.	145
34	GGH Management 3 sp. z o.o.	158
35	GGH Management 2 sp. z o.o.	171
36	GGH Management 7 sp. z o.o.	185

c. Evidence Supporting Paragraphs 34(c), (b) and (f) Allegations – Shareholder Meeting Minutes

GGH-RE was to deliver copies of meeting minutes to Golub. Golub alleges that GGH-RE failed to do so. Aside from the weak testimony confirming certain allegations recited above, Mr. Glazer was not asked about this during his testimony. Conversely, Mr. Jarząbek specifically testified, on cross-examination, that he completed all the tasks required of GGH-RE by the Second Amendments. *TT* at 291/16 to 294/24. Indeed, the Chancery Court did not, as to GGH MT Sp. z .o.o. and several other entities find that Appellants breached 2-OA. *DT* at 32-36. These findings immeasurably undermine Mr. Glazer's anemic confirmation that the Second Complaint allegations were true. Without that thread bare confirmation, Golub proffered no other evidence supporting its allegations.

AO: 297-303, a chart, identifies trial exhibits that document the execution, filing, registration, and delivery of documents by GGH-RE for specific entities set out in Exhibit A of 2-OA.[4] At Mr. Jarząbek's March 16, 2022, deposition he

[4] In pretrial submissions, Golub objected to this exhibit. That objection was based upon Golub's assertion that Mr. Jarząbek did not produce the documents referenced therein during

reviewed and testified about the chart.[5]

> Q. What do you understand this [chart] to be or to say or to show or to evidence?
>
> A. It' s summary - summary that entities and documents, which were supposed to be provided as part of Exhibit A, fulfilling the -- you know, the activities which were -- which were part of Exhibit A, so meaning which -- so it's basically a table showing for which entity, what kind of documents have to be made in order to implement the changes required by Exhibit A.
>
> Q. So what I 'm looking at right here is a breakdown of Exhibit A that shows the actions that were taken and the documents that evidence those actions. Is that correct?
>
> A. That's correct.
>
> Q. Are were [stet] these documents forwarded to anybody at Golub?
>
> A. Yes, they were.
>
> Q. Who?
>
> A. They were forwarded to Michael Glazier, definitely to Tomasz Zamiara to Michael Newman, I assume, as well.

*AO:*604/6 to 605/21.

d. Evidence Supporting Paragraph 35(a) Allegations – Appoint Golub Representative

At paragraph 35(a) of the Second Complaint, Golub alleges that GGH-RE

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discovery. *AO*: 63. Counsel confirmed by email that, in fact, the documents were produced. Golub did not respond to this email. Nor did the Chancery Court address Golub's objection.

[5] AO: 297-303 (JX203 at trial) was identified as Exhibit 40 at Mr. Jarząbek's March 16, 2022. *AO*: 604.

"[failed] to install a Golub representative on the Board of Directors of GGH, despite repeated demands by Golub CEE." *AO*: 121-22. At trial Mr. Glazer testified that for one Polish entity GGH-RE failed to install the Golub representative – Hanna Podwysocka. She was not appointed because she was deemed unqualified by the Polish company's controlling member. *TT* at 69/9 to 70/6. Moreover, Golub never identified "a substitute or replacement nominee for Hanna [Podwysocka]. *TT* at 70/4-6.

This was not the only time Golub failed to identify a representative for appointment to a management board. In fact, as Mr. Glazer admitted at trial, Golub never nominated a management board member to any of the Cypriot entities.

> Q. You've sat here and testified to this Court that Mr. Jarząbek failed to appoint a Golub representative to any of the Cypriot entities. That's not correct, is it?
>
> A. No, he -- it is correct, he didn't appoint anybody at our behest.
>
> Q. Because you didn't name anybody.
>
> A. Because we didn't -- he didn't want to proceed in the fashion that we want --
>
> Q. Because you didn't name anybody.
>
> A. You can say that if you like, yes.

TT at 93/11-21. GGH-RE can hardly be blamed for failing to install a Golub representative on the Board of Directors of GGH if Golub never nominated one. Nonetheless, the Chancery Court found the Appellants breached the 2-

OA by failing to appoint Golub representatives. Ironically, for at least two of the entities for which the Chancery Court found Appellants breached, under Polish law the Appellants were legally unable to nominate management board members.

e. Evidence Supporting Paragraph 35(b) Allegations – Provide Documents

This allegation lacks an evidentiary basis. As a result, how and what alleged conducts it relates to is uncertain. Once again, this allegation was confirmed with no more than a "yes."

> Q. . . . GGH-RE and Mr. Jarząbek have breached this obligation by, among other things: . . . (b) instructing Golub Gethouse Realty Company Ltd. (Cyprus) subsidiaries to refuse to provide corporate documents relating to that company (and its subsidiaries) to Golub CEE's appointed representatives . . . Do you see that?
>
> A. Yes.
>
> Q. And is this the entities that you were referring to as the holding company in Cyprus?
>
> A. Yes.
>
> Q. And can you explain -- well, first of all, was that true when you approved sending this second removal notice?
>
> A. Yes.
>
> Q. And is that true now?
>
> A. Yes.

Id at 44/23 to 45/20. There is no other evidence explanating how this allegation

violates the OA or Second Amendments.

f. Evidence Supporting Paragraph 35(b) Allegations – Signing the Savva Engagement Letter

Executing an engagement letter is not an obligation imposed by the Second Amendments. Mr. Glazer repeatedly blamed Mr. Jarząbek for failing to sign the Savva engagement letter. When asked on direct examination, Mr. Glazer testified Golub did not want Mr. Jarząbek to continue service as a management board member of the Cypriot companies. *TT.* at 50/16 to 51/19. To be clear, the 2-OA do not require Mr. Jarząbek to relinquish any management board position. Nonetheless, Golub insisted that he do so and used that refusal as an explanation for why the Savva engagement letter was not signed. Stated differently, Golub changed the agreement. Mr. Glazer acknowledged as much:

> He – [Mr. Jarząbek] insisted on him retaining personally a management board position, which we objected to

TT. at 47/4-5.

Aside from attempting to force Mr. Jarząbek to withdraw or resign from his director roles, contrary to 2-OA, it is Golub that created the problem with Savva. Andreas Haviaras described the problem in his April 3, 2022, report on Cyprus law.

> If the plaintiff wanted immediate and direct control over the Cyprus companies one would expect him to choose/nominate natural persons to become directors and only then to engage into negotiations with Savva as to the terms of the Savva Engagement Letter.

> The way plaintiff acted (requesting the conclusion of the Savva Engagement letter) must have caused a very troublesome situation. On the one hand Savva would need to seek instructions from entities, including plaintiff, not being direct shareholders in the said Cypriot companies and on the other hand the directors nominated by [Savva] owed their fiduciary duties only towards the managed companies. Further the Savva Engagement Letter from Savva's point of view had to be of course negotiated to the best interests of Savva, which means that Savva, acting as trustee for the shareholders. should be expected to make sure that he will not become liable in case of a deadlock between shareholders. That's because, under Cyprus law, while Savva is liable under the Savva Engagement Letter to the shareholders of the Cypriot company, Savva's trustee directors under Cyprus law have their fiduciary duties only towards the Cypriot company and not towards the shareholders.
>
> **Therefore, I am of the view that the expectation that the defendants should conclude the Savva Engagement Letter without making prior changes to the articles of association of the Cypriot companies giving floor to such engagement under Cyprus corporate law was completely unreasonable**.

AO: 270 (bold added); *see also TT* at 220/8 to 223/17. Notably, Golub's Cyprus law expert, Dr. George Pamboridis, reviewed Mr. Haviaras's expert report and testified that "I couldn't find anything in Mr. Haviaras's report with which I have any disagreement." *TT*. at 260/22 to 261/5.

The failure to execute the Savva engagement letter, and the ensuing fallout therefrom, falls solely at Golub's feet – a point acknowledged by Golub's Cyprus law expert.

g. Evidence Supporting Paragraph 36 Allegations – Having Full Authority

Golub complains that Mr. Jarząbek presented himself as being fully authorized to act. *AO*: 249 at ¶ 2. To that end he was accused of negotiating sale deals – even though no sale documentation was produced. *TT* at 27/5-9. He was accused of negotiating non-binding letters of intent. He was accused of trying to negotiate a sale. *Id*. at 47/11-14. He was accused of ignoring Golub.

Golub ignores a fundamental issue to sustain this point. As a matter of Polish and Cypriot law, and as confirmed by every testifying expert on foreign law, Mr. Jarząbek's fiduciary responsibility is to the company, not the shareholders. *TT* at 279/1-24.

ARGUMENT

I. THE CHANCERY COURT IGNORED LEGAL DUTIES IMPOSED UPON MR. JARZĄBEK AS THE DIRECTOR OF VARIOUS POLISH AND CYPRIOT COMPANIES

A. Question Presented

Did the Chancery Court commit an error at law when it ignored legal duties imposed upon Mr. Jarząbek as a director by Polish and Cypriot law for activities occurring in those countries through companies existing under the laws of those countries. Further, as a corollary, did the Chancery Court commit an error at law by enforcing the OA and 2-OA through Delaware law for actions by companies existing under Polish and Cypriot law. Appellants raised this argument in their Post-Trial Brief. *AO*: 724-25.

B. Scope of Review

On questions of law the Chancery Court's "interpretation and application of … a question of law … must be reviewed de novo on appeal." *M.G. Bancorporation, Inc. v. Le Beau*, 737 A.2d 513, 524 (Del. 1999).

C. Merits of the Argument

The evidentiary record was clear and unrebutted – Polish and Cypriot management board members owe their fiduciary duties to the company, not their members of shareholders. OA 284 (describing Polish law and stating: "The main duty of the management board of the limited liability company is to act for the

benefit of the company and not its shareholders. Consequently, a management board member is legally prohibited from seeking informal (i.e., not expressed through shareholders meeting resolutions) instructions from the shareholder, even if this is a majority shareholder.); *OA*: 269 at Q4 (regarding Cypriot law: "The directors of a Cyprus Company . . . owe their fiduciary duties only to the Company and not to the registered shareholders or the group of the registered shareholders responsible for their appointment.")

Golub argued that "Polish law permits the objectives of Exhibit A through certain steps." *Docket* 154 at p.48. Golub is correct. The problem with this is that to be correct, Polish law requires that those "certain steps" be included or added to companies governing documents. That were not. Hence, Golub's attempt to whitewash the record relied upon a hypothetical that was never implemented. Golub admits as much stating:

> But the Exhibit A obligations or a "corporate strategy" *could be* carried out with certain corporate mechanisms such as a shareholders meeting to amend the articles of association or appoint or remove a member of the management board.

Id. at p. 50. Golub buttressed the argument pointing out that the Appellants had, absent apparent qualm, removed any number of directors from Polish and Cypriot companies without any legal consequence for doing so. *Id.* at p. 51. Again, Golub is correct. But again, Golub and the Chancery Court missed the true scope of the problem. The Appellants were alleged to have breached the OA and 2OA, and the

Chancery Court confirmed that breach, because the Appellants attempted to sell certain assets, borrowed money to preserve the company's equity, or purchase a property because the investment was appealing. *DT*-50, 55-60. Yet for every single one of these alleged breaches, the Appellants had the legal obligation, under Polish or Cypriot law, to act in the Polish or Cypriot companies' best interest.

Finally, it is, and has been the law of this State, that the place of performance establishes a party's legal obligations as to that performance. *Wilmington Trust Co. v. Pennsylvania Co.*, 172 A.2d 63 (Del. 1961). As the *Wilmington Trust* court articulated it:

> The question whether a contract is valid, that is, whether to the agreement of the parties the law has annexed an obligation to perform its terms, can on general principles be determined by no other law than that which applies to the acts, that is, by the law of the place of contracting. If the law at that place annexes an obligation to the acts of the parties, the promisee has a legal right which no other law has power to take away except as a result of new acts which change it. If on the other hand the law of the place where the agreement is made annexes no legal obligation to it, there is no other law which has power to do so.

Id. at 66. In *Rsui Indem. Co. v. Murdock*, 248 A.3d 887 (Del 2021) this Court, reviewing the RESTATEMENT (Second) OF CONFLICT OF LAWS § 6, outlined factors in a conflict of laws analysis:

> They are:
>
> (a) the needs of the interstate and international systems,
>
> (b) the relevant policies of the forum,

(c) the relevant policies of other interested states and the relative interests of those states in the determination of the particular issue,

(d) the protection of justified expectations,

(e) the basic policies underlying the particular field of law,

(f) certainty, predictability and uniformity of result, and

(g) ease in the determination and application of the law to be applied.

Id. at 887. There is little doubt that Poland or Cyprus law controls the exercise of corporate governance over entities registered in the Republics and conducting business therein. Moreover, both Republics provide the statutory means for a Delaware registered corporation to exert control to carry out the operational or management control of the Delaware managers.

Under the circumstances, the Chancery Court erred, as a matter of law, when it ignored Polish and Cypriot law. In doing so, this facilitated the Chancery Court determination that the Appellants breached their OA and 2-OA. Accordingly, the judgement of the Chancery Court must be reversed.

II. THE APPELLEE FAILED TO MEET ITS EVIDENTIARY BURDEN.

A. Question Presented

Whether the Chancery Court erred in granting Golub relief based upon factual proffers that were both inconsistent with their own documentary records, prior deposition testimony, rebutted by other trial testimony and, most importantly supported by no more than a single question and simple answer that asked for no more than confirmation that the allegations of the Second Removal Notice, and not the complaint, were accurate. Appellants raised this argument in their Post-Trial Brief. *AO*: 712-18.

B. Scope of Review

If the trial court's findings of fact are "supported by the record and are the product of an orderly and logical deductive process" those finding shall be affirmed. *Levitt v. Bouvier*, 287 A.2d 671, 673 (Del. 1972). Upon appeal, this Court has the duty to review the sufficiency of the evidence and to test the propriety of the findings below. *Brittingham v. American Dredging Co*., 262 A.2d 255 (Del. 1970).

Consequently, this Court gives the trial court's factual finding a high level of deference. If those findings are sufficiently supported by the record and are the product of an orderly and logical deductive process, in the exercise of judicial

restraint those finding are confirmed, even though independently this Court might have reached opposite conclusion. *Application of Delaware Racing Ass'n*, 213 A.2d 203, 207 (Del. 1965).

While this Court must accept Chancery Court findings of fact if they are supported by the record, the Court is not bound to accept inferences and deductions which are either not supported by the record or are not the product of an orderly and logical deductive reasoning process. *Levitt, supra* at 673.

C. Merits of the Argument.

During trial Golub's sole witness, Mr. Glazer, was asked whether the Appellant's breached the OA or 2-OA. Mr. Glazer dutifully acknowledged that the had. Below appears a typical sequence of trial question and answer to that end:

> Q. You mentioned that Golub had filed suit in this Court. Do you recognize [the Second Complaint]?
>
> A. Yes, I do.
>
> Q. And did you review this complaint before it was filed
>
> A. Yes, I did.
>
> Q. And did you verify it?
>
> A. Yes, I did.
>
> Q. And were the allegations in this complaint true, to the best of your knowledge?
>
> A. Yes, they were.

Tt at 24/12-22. This kind of factually empty question and Mr. Glazer's factually devoid response is repeated though his trial testimony. Here is the fundamental problem. Golub is the beneficiary of a series of adverse inferences. The imposition of those adverse inference did not, however, relieve Golub of meeting its burden of proof.

The questions and answers cited above add virtually nothing more than the pleadings brought to the table - notice. For example, Golub contends that GGH-RE failed to file certain documents with the NCR. Golub proffered 9 NCR docket ledgers. As described above, the NCR dockets do not support Mr. Glazer's "yes" on this point. The Chancery Court recognized as much, however, the evidentiary worth of a simple "yes" accounted for despite the fact that the answer was objectively dead wrong.

In other instances, Mr. Glazer's trial testimony was inconsistent with his deposition testimony. In deposition, Mr. Glazer volunteered that GGH-RE failed to deliver documents as required by 2-OA, Exhibit A.

> Q. How do you verify a Complaint where you allege a failure to comply with these obligations and not know whether or not you received some of the documents that Mr. Jarzabek and GGH-RE were supposed to provide?
>
> A. I know we -- I don't -- what I don't know is that he sent those things to me and how he sent them.
>
> Q. That doesn't mean that they didn't get there, does it?

A. It does, because we -- there is a format for him to send it, you know.

Q. Whoa, whoa, whoa. So, because he didn't follow -- I'm sorry, go ahead. I didn't mean to interrupt.

A. There's notice provisions in our agreement, he should have sent something formally. Okay. He didn't. There's no verification of these things. **We know it didn't happen**. You're asking of my personal recollection.

Q. Right. So, what you're telling me –

A. At the time you asked me the question, at the time we verified the Complaint, I believe we had not received them.

Q. That's not -- wasn't your testimony. Your testimony was you didn't know.

A. That's right . . .

Glazer Deposition, Dkt.87, at 173/8 to 174/13 (bold and underline added). At trial, in the face of scrutiny, Mr. Glazer contradicted himself.

Q. Because you had not received them because they had not been delivered through the formal channel; correct?

A. Correct.

Q. Okay. So not delivered by the formal channel means not received.

A. Correct.

Q. Okay. So if you got them by email, that didn't count.

A. I didn't say that.

Q. Well, I'm trying to square that with your answer. So square my point with what you just said. If you got it by email, what I think you

told us in your deposition was it didn't count because it didn't come to us formally.

A. That's not what I said.

Q. Well, read what you said.

A. I read what I said. I know what I said. I think I would like to explain.

Q. Go ahead.

Id. at 131/14 to 132/9. For almost a half-page, Mr. Glazer attempts to whitewash his contradiction. He did not. When all was said and done, after a wobbly explanation, Mr. Glazer again admitted that Golub did not receive document if they had not been sent following some feigned formality.

Q. [Delivery] didn't happen formally?

A. Timely, I said.

Q. Formally, that's what I'm asking you.

A. Formally, an email with a transmittal like I just explained would, in fact, be acceptable.

Q. That's not what you said in your deposition though, is it?

A. Formally can be an email.

Q. Formally is not what you said in your deposition. There's a notice provision in the operating agreement, paragraph 15, I believe.

A. Correct.

Q. [GGH-RE] didn't follow that. You said [Golub] didn't receive them; correct?

A. I did, in the deposition, yes.

Id. at 133/2-17.

With respect to Mr. Glazer, the fundamental problem here is not that his testimony was rebutted or conflicting with other witness testimony and the Chancery Court elected to give more weight to his testimony, or that he may have been deemed a more credible witness. Rather the problem is Mr. Glazer's own testimony was both inconsistent with other Golub evidence and he contradicted himself. At no point did the Chancery Court acknowledge these inherent flaws. Instead, the court relied upon Mr. Glazer's conflicted testimony to draw inferences and conclusions that the Appellants breached the OA and 2-OA. From this vantage point it cannot be said that the Chancery Court factual finding product of an orderly and logical deductive process and for that reason, the decision of the Chancery Court should be reversed.

In another example of insufficient factual support, the Chancery Court concluded that the Appellants' breached 2-OA at Exhibit A because they failed to replace "supervisory boards" of the Cypriot companies. Under Polish and Cypriot law, supervisory boards are statutory creations that can, if contained in the relevant articles of association, reverse a director's fiduciary duties to member/ shareholders. *AO*: 269 at Q5 (Cypriot law). The Appellants' Cyprus expert report stated that he "could find no locate any suggestions/measures" that a supervisory

board was part of the Cypriot companies' governance. Notwithstanding that the Appellants did not have the burden of proof on the issue, their expert, as to the Cyprus companies found no supervisory board. Golub offered nothing to support the existence of a supervisory board or to rebut the Appellants' Cypriot expert. Nonetheless, the Chancery Court found that the Appellants breach 2-OA because DT 38 (stating "I find that GGH-RE's failure to appoint a Golub nominee to the management board and failure to appoint a new supervisory board constitutes two breaches of the LLC agreement with respect to Golub Gethouse Property Fund II S.A.").

Another set of the Chancery Court's factual findings are unsupported. Specifically, 2-OA at Exhibit A requires the Appellants to appoint Golub's nominees to listed Polish and Cypriot companies. As a prerequisite to this obligation, however, Golub had the right and duty to nominate a director. Golub did not. In one glaring example of this Chancery Court error,

> Polakowski was removed from the management board on August 16, 2021. That's [*AO*: 196]. According to adverse inference 2(n), and the pretrial order paragraph 50, however, GGH-RE has not caused a Golub nominee to be appointed to the management board, which I find constitutes a breach of the LLC agreement with respect to Golub Gethouse Real Estate Investment Management sp. z o.o.

AO: 38-39. Having no obligation to nominate a director, the Appellants cannot be in breach of 2-OA for failing to do so. Yet the Chancery Court so concluded.

III. THE CHANCERY COURT ABUSED ITS DISCRETION BY IMPOSING ADVERSE INFERENCES AND CLOSING DISCOVERY AGAINST THE FOREIGN APPELLANTS.

A. Question Presented

Whether under the circumstance of this case including the Appellants status as foreign nationals, with no meaningful experience in Delaware courts, no familiarity with Delaware law, and no finding that that Mr. Jarząbek acted maliciously, or with intent to delay, to obstruct, or otherwise with a culpable metal state, the Chancery Court abused its discretion by imposing the dual sanction of adverse inferences and closing the discovery record. This argument was not preserved on appeal. SUPREME COURT RULE 8 otherwise prohibits a party from raising on appeal an argument not raised before the trial court. That Rule, however, admits for an exception based upon an interest of justice consideration. These facts warrant such consideration.

B. Scope of Review

A trial judge has broad discretion to impose discovery sanctions, and on appeal this Court "will not disturb a trial [judge]'s decision regarding sanctions imposed for discovery violations absent an abuse of discretion," the trial judge's "decision to impose sanctions must be just and reasonable." *Lehman Cap. v. Lofland ex rel. Est. of Monroe*, 906 A.2d 122, 131 (Del. 2006). The application of the legal standard for sanctions is a question of law that this Court reviews *de*

novo. *TransPerfect Glob., Inc. v. Pincus*, 278 A.3d 630, 645 (Del. 2022). "[W]hen a trial judge exceeds the bounds of reason in light of the circumstances . . . discretion has been abused." *Roache v. Charney*, 38 A.3d 281, 287 (Del. 2012)

C. Merits of Argument

The imposition of sanctions by a court should always bear proportionality to the conduct warranting the imposition of sanctions. *Cartanza v. Cartanza*, 2013 Del. Ch. LEXIS 98, 2013 WL 1615767, at *2 (Del. Ch. Apr. 16, 2013), *reargument denied*, 2013 WL 3376964 (Del. Ch. July 8, 2013)

In this case, the Appellants are foreign nationals with no meaningful experience with Delaware law or courts. Suffice it to say that the Chancery Court's willingness and ability to move expeditiously are qualities familiar to those doing business within the State. Citizens of other US states, however, have little to compare against in their own States. It therefore goes without saying, that a Foreign national, with little awareness of the US legal system in general, and Delaware in particular, lacks appreciation for the concept of a summary proceeding.

Moreover, the Chancery Court never conclude that Mr. Jarząbek acted maliciously, or with intent to delay, to obstruct, or otherwise with a culpable metal state. These observations coupled with Mr. Jarząbek's unfamiliarity with Delaware law, especially the concept of a summary proceeding, should not have

resulted in one of a most serious combination of sanctions short of default judgment. Yet it did.

In terms of severity, an adverse inference is a second-tier sanction behind a default judgment. Both sanctions require some element of culpability or intent to undermine discovery. Such is not the case here and, more importantly, the Chancery Court reached no such conclusion. GGH-Re's failure was not promptly finding Delaware counsel. While not excusable, the combination of sanctions imposed by the Chancery Court clearly outweighs the bounds of reason.

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VII. CONCLUSION

WHEREFORE, the Appellants. GGH-RE Investment Partners Limited and Cezary Jarząbek respectfully request that this Court reverse the judgment of the Chancery court and to award such other relief as warranted by the facts, law, and equity.

CONAWAY-LEGAL LLC

Date: March 28, 2023

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INDEX OF ABBREVIATIONS

Abbreviation	*Full Name/Description*	*Page First Appearing*
Company or GGRC	Golub Gethouse Realty Company LLC (Delaware – the Nominal Defendant)	1
DT	Decision Transcript - Chancery Court September 14, 2022, oral ruling.	22
First Action	*Golub CEE Investors LLC. V. GGH-RE Investment Partners Limited and Cezary Jarząbek*, Del. Ch., C.A. No: 2020-0967-KSJM (Filed 11/12/2020)	7
Mr. Glazer	Michael Glazer	5
Golub	Golub CEE Investors LLC (Delaware)	1
GGH-RE	GGH-RE Investment Partners Limited (Cyprus)	1
Mr. Jarząbek	Cezarek Jarząbek	1
OA	Operating Agreement	2
2-OA	Second Amendment to the Operation Agreement	5
OMM	Operating Managing Member	1
TT	Trial Transcript	10