



IN THE SUPREME COURT OF THE STATE OF DELAWARE

RICHARD BLANCH, VIVIANNA BLANCH,
RED BRIDGE & STONE, LLC, and CLOVIS
HOLDINGS LLC,

Defendants, Nominal Defendant, Counterclaim
and Third-Party Plaintiffs-Below / Appellants,

v.

STONE & PAPER INVESTORS, LLC, CLOVIS
HOLDINGS, LLC,

Plaintiffs and Counterclaim Defendants-Below
/ Appellees,

and

JAD TRADING LLC, DIAMOND CARTER
TRADING, LLC, JOHN DIAMOND,
KANOKPAN KHUMPOO, ALBERT CARTER,
ELIZABETH CARTER, EISENBERG & BLAU,
CPAS, P.C., RICHARD EISENBERG, and DDK
& COMPANY, LLP,

Counterclaim and Third-Party Defendants-
Below / Appellees.

**APPELLEES EISENBERG & BLAU, CPAS, P.C., RICHARD EISENBERG,
AND DDK & COMPANY, LLP'S ANSWERING BRIEF**

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NATURE OF PROCEEDINGS

Richard Eisenberg (“Mr. Eisenberg”), Eisenberg & Blau CPAs, P.C. (“Eisenberg & Blau”), and DDK & Company, LLP (“DDK & Company”), together referred to as the “Eisenberg Parties”, are Third-Party Defendants in this case.

On May 31, 2018, Stone & Paper Investors, LLC (“Stone & Paper”) commenced the 2018-0394-PAF case (“2018 case”) in the Court of Chancery against Richard Blanch (“Mr. Blanch”), Vivianna Blanch (“Mrs. Blanch”), Red Bridge & Stone, LLC (“Red Bridge”), Brian Skinner (“Mr. Skinner”), and Skinner Capital, LLC (“Skinner Capital”). The Eisenberg Parties were not involved at that time.

On July 24, 2019, the Eisenberg Parties were named as Third-Party Defendants in the 2018 case. It was alleged that the Eisenberg Parties breached their fiduciary duty to Clovis Holdings, and engaged in a civil conspiracy. However, the Eisenberg Parties were not properly served until October of 2020 – two months before the trial was scheduled to commence.¹

On October 22, 2020, the Court of Chancery severed the Eisenberg Parties and the claims against them from the trial scheduled to begin on December 14, 2020.

¹ The issue of whether the Eisenberg Parties were properly served in 2019 was mooted when it was not raised in Appellants’ Briefs. However, the Eisenberg Parties agree they were properly served in October 2020.

The Court of Chancery stated this was to avoid a “manifestly unjust” situation where the Eisenberg Parties would have less than two months to prepare for the trial.²

On December 14, 2020, the trial on which the Appellants’ Appeal is based on occurred. The only “participation” of the Eisenberg Parties at trial was Mr. Eisenberg’s deposition testimony regarding the 2014 and 2015 Clovis Holdings tax return documents, and communications surrounding their creation and preparation.

On March 31, 2021, Clovis Holdings filed a separate Complaint that included claims against the Eisenberg Parties, the 2021-0273-PAF case (“2021 case”). As it pertained to the Eisenberg Parties, Clovis Holdings’ claims in the 2021 case were identical to the claims in the 2018 case.

On March 07, 2022, the Eisenberg Parties moved to dismiss Clovis Holdings’ Third-Party Complaint against them in the 2018 case. Additional motions to dismiss were filed by Third Party Defendants Andrew Kaslov, Ira Schickman, and Stone & Paper Investors.

On March 09, 2022, Clovis Holdings filed a Notice of Dismissal With Prejudice of their 2021 case.

² Appellants’ Corrected Opening Br., App’x, p. A000104, Trans. ID 66073886, Page 21, Lines 16 through 21 (“The case is scheduled for trial in less than two months, and it would be manifestly unjust to try to force [the Eisenberg Parties] to get up to speed and try this case, particularly as to facts that have been in the record and known to the Blanch defendants for over a year.”)

On December 05, 2022, the Court of Chancery dismissed, with prejudice, the 2018 case's Third-Party Complaint against the Eisenberg Parties, and Stone & Paper Investors. The dismissal with prejudice was based on *res judicata*.

On February 01, 2023, the Court of Chancery denied the Appellants' Motions for Reargument and Leave to file a Reply Brief regarding the December 05th dismissal of the Third-Party Complaint against the Eisenberg Parties.

On July 12, 2023, the Court of Chancery filed a Final Order and Judgment for the 2018 case.

On July 25, 2023, the Appellants filed their Notice of Appeal of this current matter to the Supreme Court of the State of Delaware. In the Appellants' Notice of Appeal, they include the October 22nd, December 05th, February 01st, and July 12th Rulings and Orders mentioned previously.

On September 12, 2023, the Appellants filed their Opening Brief. On October 04, 2023, the Appellants filed their Corrected Opening Brief.

This is the Eisenberg Parties' Answering Brief.

SUMMARY OF ARGUMENT

I. The Orders and Rulings regarding Richard Eisenberg (“Mr. Eisenberg”), Eisenberg & Blau CPAs, P.C. (“Eisenberg & Blau”), and DDK & Company LLP (“DDK & Company”) (together referred to as the “Eisenberg Parties”) should be affirmed. The Rules of the Supreme Court of the State of Delaware state, “The merits of any argument that is not raised in the body of the Opening Brief shall be deemed waived and will not be considered by the Court on appeal.”³ The Corrected Opening Brief focused only on issues at the trial that the Eisenberg Parties were severed from. The Corrected Opening Brief does not have any arguments against the Eisenberg Parties, or on the Orders and Rulings in the Eisenberg Parties’ favor. Factual references to Mr. Eisenberg’s deposition testimony in the Corrected Opening Brief are not enough to preserve an argument on appeal. The Appellants’ silence on all Rulings and Orders in the Eisenberg Parties favor is a waiver of any and all claims they may have preserved at the trial level or on their Notice of Appeal.

³ Supr. Ct. R. 14(b)(vi)(A)(3).

STATEMENT OF FACTS

I. The Parties

Appellee Richard Eisenberg (“Mr. Eisenberg”) is a Certified Public Accountant, partner at DDK & Company, former Principal of Eisenberg & Blau CPA, PC,⁴ and a Third-Party Defendant in the case below. Mr. Eisenberg, on behalf of Eisenberg & Blau and DDK & Company, performed income tax return and partnership tax return services for Clovis Holdings LLC for the 2014 and 2015 tax years.⁵ Mr. Eisenberg had also prepared John Diamond (“Mr. Diamond”) tax returns for both Mr. Diamond personally and companies Mr. Diamond was principal of.⁶

Appellee Eisenberg & Blau CPA P.C., (“Eisenberg & Blau”) was an accounting firm located in New York City, New York,⁷ and a Third-Party Defendant in the case below. In 2016, Eisenberg & Blau merged into DDK & Company.⁸

Appellee DDK & Company, LLP (“DDK & Company”) is an accounting firm located in New York City, New York, the successor accounting firm of Eisenberg & Blau,⁹ and a Third-Party Defendant in the case below.

⁴ Appellants’ Corrected Opening Br., App’x p. A000111, Trans. ID. 66181294 (herein “A...”).

⁵ A000282-83, ¶¶ 20, 21.

⁶ A001383.

⁷ A000198.

⁸ A000410.

⁹ A000019-20, Trans. ID 65953355.

II. The Eisenberg Parties Tax Preparation Services For Clovis Holdings.

At the formation of Clovis Holdings, Mr. Diamond reached out to Mr. Eisenberg for assistance in preparing income tax returns and partnership tax returns for Clovis Holdings.¹⁰ Mr. Eisenberg, under the Eisenberg and Blau banner in 2015 and later under the DDK & Company banner in 2016, prepared the income tax returns and partnership tax returns for Clovis Holdings for the aforesaid tax years.¹¹

III. The Initiation Of The Lawsuit Below.

On May 31, 2018, the action below commenced between Stone & Paper, Clovis Holdings, Mr. Blanch, Mrs. Blanch, Red Bridge, Mr. Skinner, and Skinner Capital.¹² The Eisenberg Parties were not initially involved in the lawsuit.

IV. The Eisenberg Parties Are Brought In As Third-Party Defendants.

On July 24, 2019, the Appellants filed a Third-Party Complaint against the Eisenberg Parties.¹³ However, the Eisenberg Parties were not properly served with the claims against them until October of 2020.¹⁴

¹⁰ A001383-84.

¹¹ A000282-83, ¶¶ 20, 21.

¹² A000001, Trans. ID 62085045.

¹³ A000019, Trans. ID 63623832.

¹⁴ The issue of whether the Eisenberg Parties were properly served in 2019 was mooted when it was not raised in Appellants' Briefs. However, the Eisenberg Parties agreed they were properly served in October of 2020.

V. The Chancery Court Stays And Severs The Claims Asserted Against The Eisenberg Parties.

On October 22, 2020, the Court of Chancery held a hearing regarding the Eisenberg Parties' Motion to Stay and Sever the claims against them from the December 14, 2020 trial.¹⁵ The Court of Chancery severed the claims asserted against the Eisenberg Parties from the December 14th trial.¹⁶

VI. The Trial Of The Case Below Commences.

On December 14, 2020, the trial in which the Appellants' base their appeal upon commenced.¹⁷ The trial lasted four days.¹⁸

Mr. Eisenberg "testified" via submission of selected portions of his video deposition.¹⁹

VII. The Court Of Chancery Dismisses The Third-Party Complaint Against The Eisenberg Parties With Prejudice.

On March 31, 2021, Clovis Holdings filed the 2021 case against Stone & Paper, Ira Shickman, and the Eisenberg Parties.²⁰ The Complaint alleges that the Eisenberg Parties breached their fiduciary duty to Clovis Holdings,²¹ and engaged

¹⁵ A000100, Trans. ID 66047530. *See also* A000104, Trans. ID 66073886.

¹⁶ *Id.*

¹⁷ A000307.

¹⁸ A000307-1416.

¹⁹ A001369-1405.

²⁰ A000144, Trans. ID 68507639. *See also* A000146, Trans. ID 68757770.

²¹ *Id.*

in civil conspiracy with Stone & Paper and Ira Schickman.²² The allegations in the 2021 case were identical to the severed claims against the Eisenberg Parties in the 2018 case.

On February 16, 2022, the Court of Chancery held a teleconference to discuss the severed claims in the 2018 case, as well as the separately filed 2021 case.²³ The Court of Chancery did not order Clovis Holdings to dismiss the 2021 case with prejudice.²⁴

On March 07, 2022, the Eisenberg Parties filed a Motion to Dismiss Third-Party Claims.²⁵

On or about March 09, 2022, Clovis Holdings filed a formal Notice of Dismissal With Prejudice regarding the 2021 case.²⁶ That same day, in response to Clovis Holdings' Notice of Dismissal With Prejudice of the 2021 case, the Eisenberg Parties filed an addendum to their March 07th Motion to Dismiss Third-Party Claims, which argued that *res judicata* required dismissal of the 2018 case against the Eisenberg Parties because of the with prejudice dismissal of the identical claims in the 2021 case.²⁷

²² *Id.*

²³ A000135, Trans. ID 67350286.

²⁴ *Id.*

²⁵ A000135-136, Trans. ID 67371932.

²⁶ A000147-148, Trans. ID 69054619.

²⁷ A000137-138, Trans. ID 67381363.

On December 05, 2022, the Court of Chancery held a hearing on the Eisenberg Parties' Motion to Dismiss the 2018 Third-Party Complaint against them.²⁸ At the conclusion of the hearing, the Court of Chancery granted the Eisenberg Parties' Motion to dismiss the Third-Party Complaint in its entirety with prejudice.²⁹

VIII. The Court of Chancery Denies Clovis Holdings' Motion For Reargument And Leave To File A Reply Brief.

On February 01, 2023, the Court of Chancery issued an Order denying Clovis Holdings' Motion for Reargument and Leave to File a Reply Brief on the dismissal with prejudice of the Third-Party Complaint against the Eisenberg Parties.³⁰

IX. The Appellants' Notice of Appeal.

On July 26, 2023, the Appellants' filed a Notice of Appeal to the Supreme Court of the State of Delaware.³¹ Their appeal included fifteen decisions from the case below.³² Of those fifteen decisions, the ones that directly involved the Eisenberg Parties are as follows:

(1) The October 22, 2020 Oral Ruling on Third-Party Defendants' DDK & Company, Richard Eisenberg, and Eisenberg & Blau's Motion to Stay the Third-

²⁸ A000144, Trans. ID 68507639. *See also* A000146, Trans. ID 68757770.

²⁹ *Id.*

³⁰ A000147-148, Trans. ID 69054619.

³¹ A000155, Trans. ID 70485582.

³² *Id.*

Party Complaint Against Them, or, in the Alternative, to Sever the Third-Party Complaint;³³

(2) The October 22, 2020 Order severing claims against DDK & Company, Richard Eisenberg, and Eisenberg & Blau from the claims scheduled for trial on December 14, 2020;³⁴

(3) The December 05, 2022 Oral Rulings on Stone & Paper Investors' Motion to Dismiss Counterclaims and Third Party Claims, as well as Third-Party Defendants' Eisenberg & Blau, DDK & Company, and Richard Eisenberg's Motion to Dismiss Third-Party Claims;³⁵

(4) The December 05, 2022 Order granting Third-Party Defendants Eisenberg & Blau, DDK & Company, and Richard Eisenberg's Motion to Dismiss Third-Party Claims;³⁶

(5) The February 01, 2023 Order denying Motions for Reargument and for Leave to File a Reply Brief;³⁷ and

(6) The July 07, 2023 Final Order and Judgment on the case below.³⁸

³³ A000104, Trans. ID 66073886.

³⁴ A000100, Trans. ID 66047530.

³⁵ A000146, Trans. ID 68757770.

³⁶ A000144, Trans. ID 68507720.

³⁷ A000147-148, Trans. ID 69054619.

³⁸ A000154-155, Trans. ID 70333556.

X. Appellants' Opening Brief And Corrected Opening Brief.

On September 12, 2023, the Appellants filed their Opening Brief.³⁹ On October 04, 2023, the Appellants filed a Corrected Opening Brief.⁴⁰ Even though the Appellants' Appeal was taken against the Eisenberg Parties, and others, no arguments against the Eisenberg Parties are made in either Brief. There is no reference to Eisenberg & Blau or DDK & Company in the Facts or Arguments of either Brief. There are no arguments made in either Brief that the Rulings and Orders, or portions of same, affecting the Eisenberg Parties should be disturbed.

Mr. Eisenberg is mentioned in both Briefs as the "personal accountant" of John Diamond, as well as the accountant for Clovis Holdings.⁴¹ Further, both Briefs reference Appendix Page A000196, which is email correspondence involving Mr. Eisenberg.⁴² These references to Mr. Eisenberg in both Briefs is solely factual.

³⁹ Appellants' Opening Br.

⁴⁰ Appellants' Corrected Br.

⁴¹ *Id.* at 17. *See also* Appellants' Opening Br. p. 17.

⁴² *Id.* at 17, 35-36. *See also* Appellants' Opening Br. pp. 17, 35-36.

ARGUMENT

I. The Rulings And Orders In The Eisenberg Parties' Favor Should Not Be Disturbed Because The Appellants' Have Waived Them By Not Arguing Them In Their Opening Brief.

A. Question Presented

Whether the Judgments and Orders pertaining to the Counterclaims in the Trial Court Below regarding the Eisenberg Parties should be disturbed when: (1) the Appellants gave notice of appealing the Orders and Judgments to the Delaware Supreme Court; (2) the Opening Brief does not expressly reference, cite, or otherwise mention these Orders and/or Judgments; (3) the Opening Brief does not adequately set forth arguments with the Orders and/or Judgments regarding the Eisenberg Parties; and (4) the Opening Brief does not present an argument in support of reversing the Order.

B. Scope of Review

The Delaware Supreme Court reviews the Court of Chancery's legal conclusions *de novo*, but defers to the Court of Chancery's factual findings supported by the record.⁴³

C. Merits of Argument

The Rulings and Orders in the Eisenberg Parties' favor should not be disturbed because the Appellant's have waived any issues they may have with them.

⁴³ See *Coster v. UIP Companies, Inc.*, 2023 WL 4239581, at *5 (Del. June 28, 2023).

The merits of any argument that is not raised in the body of the opening brief shall be deemed waived and will not be considered by the Court on appeal.⁴⁴ This Court has well established that, “The failure to raise a legal issue in the text of the opening brief generally constitutes a waiver of that claim on appeal.”⁴⁵ Indeed, Delaware Supreme Court Rule 14(b)(iv)(A)(3) states, “The merits of any argument that is not raised in the body of the opening brief shall be deemed waived and will not be considered by the Court on appeal.”⁴⁶ Further, it is not enough to simply mention or reference an issue or fact in a Brief.⁴⁷

In the present matter, the Appellants gave notice that they were appealing a total of fifteen Rulings/Orders from the trial court below.⁴⁸ Of these fifteen, the Eisenberg Parties are directly affected by six.⁴⁹

The Corrected Opening Brief make no explicit mention of the six previously referenced Orders and Rulings that concern the Eisenberg Parties. In fact, the Corrected Opening Brief does not make a single argument against the Eisenberg

⁴⁴ Supr. Ct. R. 14(b)(vi)(A)(3).

⁴⁵ *Roca v. E.I. du Pont de Nemours & Co.*, 842 A.2d 1238, 1241 (Del. 2004) (citing *Murphy v. State*, 632 A.2d 1150, 1152 (Del. 1993)).

⁴⁶ See also *Turnbull for Turnbull v. Fink*, 644 A.2d 1322, 1324 (Del. 1994) (“[T]he failure of a party appellant to present and argue a legal issue in the text of an opening brief constitutes a waiver of that claim on appeal.”).

⁴⁷ See *Roca*, 842 A.2d at 1242 (Del. 2004) (“[C]asual mention of an issue in a brief is cursory treatment insufficient to preserve the issue for appeal.”) See also *Kost v. Kozakiewicz*, 1 F.3d 176, 182 (3d Cir. 1993).

⁴⁸ A000155, Trans. ID 70485582.

⁴⁹ See Answering Br., p. 12-13, *supra*.

Parties. The only one of the Eisenberg Parties mentioned in the Corrected Opening Brief is Mr. Eisenberg, and it is strictly as to undisputed factual matters.⁵⁰

As the Corrected Opening Brief makes no arguments for disturbing the six Orders and Rulings previously mentioned, this Court should affirm those Orders and Rulings as relevant to the Eisenberg parties. As this Court correctly stated in *Turnbull*, “[T]he failure of a party appellant to present and argue a legal issue in the text of an opening brief constitutes a waiver of that claim on appeal.”⁵¹ In the current matter, the Corrected Opening Brief is silent on the matters in favor of the Eisenberg Parties from the court below. The Corrected Opening Brief makes no argument that there was any error regarding the Eisenberg Parties and the Claims asserted against them being severed from the trial. The Corrected Opening Brief makes no argument that there was any error on the trial court’s Rulings and Orders regarding *res judicata*, which was the foundation as to why the 2018 case against the Eisenberg Parties was dismissed with prejudice.⁵²

The Final Order and Judgment is partially addressed by the Appellants, but only in the form of a downstream effect regarding analysis of the Operating Agreement, fraudulent concealment, civil conspiracy, and aiding and abetting.⁵³ The

⁵⁰ See Appellants’ Corrected Opening Brief, pp. 17, 36, 39.

⁵¹ *Turnbull for Turnbull v. Fink*, 644 A.2d 1322, 1324.

⁵² A000147-148, Trans. ID 69054619.

⁵³ See Appellants’ Corrected Opening Brief, pp. 37-40.

analysis Appellants' argument is based upon is from the trial, as identified in their Corrected Opening Brief.⁵⁴ The Court of Chancery's analysis has little to do, if anything to do at all, with the Eisenberg Parties. The claims asserted against the Eisenberg Parties were severed from the trial where this analysis occurred. In other words, the Corrected Opening Brief does not make a single argument or reference regarding the Rulings and Orders in favor of the Eisenberg Parties. As such, any portions of Rulings and Orders in the Eisenberg Parties' favor should remain in favor of the Eisenberg Parties.

The factual reference to Mr. Eisenberg's conduct in the Corrected Opening Brief is not enough to preserve an issue for appeal. As this Court correctly pointed out in *Roca*, "[C]asual mention of an issue in a brief is cursory treatment insufficient to preserve the issue for appeal."⁵⁵ Indeed, this Court has held that the appellant's opening brief must fully state the grounds for appeal, as well as the arguments and supporting authorities on each issue or claim of reversible error.⁵⁶ The Appellants' raised no qualms regarding the Eisenberg Parties, and have such waived any arguments that the Rulings and Orders in the Eisenberg Parties' favor should be disturbed.

⁵⁴ See Appellants' Corrected Opening Brief, pp. 37-40.

⁵⁵ *Roca v. E.I. du Pont de Nemours & Co.*, 842 A.2d 1238, 1242.

⁵⁶ *Id.*

CONCLUSION

For these reasons, this Court should affirm the Judgment and Orders of the trial court regarding Richard Eisenberg, Eisenberg & Blau, and DDK & Company; and enter Judgment in favor of Richard Eisenberg, Eisenberg & Blau, and DDK & Company.

Respectfully submitted,

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