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IN THE SUPREME COURT OF THE STATE OF DELAWARE

COLLEEN MCGUIGAN, Counterclaim-Plaintiff/Appellant, v. THOMAS D. MURRAY and TDM PROPERTY INVESTMENTS LLC Counterclaim-Defendants/Appellees.	)	No. 326, 2023 Court below: Court of Chancery of the State of Delaware, C.A. No. 2018-0819-KSJM

APPELLANT'S REPLY BRIEF

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INTRODUCTION[1]

This appeal is straightforward: Appellant Colleen McGuigan ("Colleen" or "Appellant"), upon entertaining the possibility that her *hand-written signature* on a corporate stock option (the "Option") may have been forged, conducted an investigation and correctly concluded that the signature on the Option was her signature. At that point Colleen was not and had no reason to be searching for the more elaborate deceit of a cut-and-paste forgery. However, when evidence finally surfaced that Colleen's signature on the Option was the product of a cut-and-paste forgery, she brought suit within three years, consistent with the analogous limitations period. Thomas Murray ("Thomas" or "Appellee") conceded the difficulty of detecting the forgery, as did the Court of Chancery. Yet the Court of Chancery concluded that Colleen somehow should have known earlier, and that therefore her claim was time-barred.

Thomas's answering brief does not address this glaring contradiction at the core of the Court of Chancery's opinion: the fact that a passive stockholder who had no involvement with the operation of a Delaware corporation *should have been aware* of a cut and paste forgery of seven signatures on a corporate document, while the President and director of the Corporation for nearly 30 years, who was the

[1] Citations to Appellant's Opening Brief are "OB __". Appellee's Answering Brief are "RB __".

beneficiary of the forgery and whose signature appeared on the forged document, was not charged with such knowledge. As the Court of Chancery itself stated, contrary to its ultimate ruling, "[w]ithout seeing the 1988 Option side-by-side with the [Source Document], there was little reason to suspect anything nefarious." Op. at 22. Either the forgery was not obvious at all, in which case Appellant's suit against Appellees should proceed, or it was obvious, in which case the President/Director of the corporation should bear the responsibility for failing to uncover it, and equity should bar his laches defense. Allowing the current contradictory result to stand turns the principles of equity upside down and sets alarming precedent in Delaware for passive investors.

Thomas's answering brief is anchored upon the assertion that Colleen should have identified certain "red flags" in the forged document prior to the time she did, but ignores the fact that the same purported "red flags" were right in front of Thomas. He shared the same lack of recollection of signing the forged document or being at a meeting where the forged document was signed by others, or any meeting where the forged document was discussed. As he testified: "I didn't know [the Option] was fabricated. How would [Colleen] know?" A231 at 84:2-9; A218 at 30:5-31:9, A233 at 92:10-19. Indeed, this is where the Court of Chancery's opinion falters. If the Court found Thomas's testimony credible that he did not know of the forgery until the course of the underlying litigation, there was no way Colleen should have known

either. The minor inconsistencies in the document that Thomas's lawyers now argue are "obvious" do not meet the legal standard of "red flags" that trigger inquiry notice, and the Court of Chancery erred in concluding otherwise. Even if later suspicions about these inconsistencies were considered red flags, laches does not apply unless a diligent inquiry into those red flags *would have revealed the injury*—a legal standard that the Court of Chancery did not address.

Colleen did conduct a diligent inquiry when presented with the suggestion that a signature on the document was forged (not hers), but it did not yield any evidence that her signature was falsified. In fact, we know it was Colleen's actual signature. But it could not have been discovered that it was a cut-and-paste forgery of her signature until *after* September 2018, the three-year mark before Colleen brought her claims: the source document was not even produced until December 2018. The "diligent inquiry" standard does not require a stockholder to sue for access to the company's books and records (particularly when she does not believe she actually is a stockholder), and then comb through hundreds if not thousands of corporate records in search of a cut-and-paste forgery she does not even know exists, in order to protect her right to seek redress. It borders on the absurd to suggest otherwise. Before Colleen knew of this cut-and-paste forgery, any fraud and breach of fiduciary duty claims (which she did not know she had) would not have survived a motion to dismiss, an argument to which Thomas mounts no real challenge. Thomas's theory

is that because someone *eventually* discovered the forgery in discovery, any "diligent inquiry" would have revealed it, even though he—as the President of NBC—was purportedly unaware of it while attempting to enforce the forged document.

Finally, Thomas tries to insinuate that there was something nefarious in the timing of Colleen's claims, but the evidence refutes this. For example, Colleen was not lying in wait to bring her counterclaim on the eve of a mediation she did not know was occurring. The Court of Chancery made no such finding because the evidence flatly contradicts it: counsel for Thomas admitted in open court that Thomas and Michael agreed not to inform Colleen about the mediation. AR32–33. This and Thomas's other efforts to smear Colleen are a transparent attempt to divert from the legal merits and focus on unsupported and irrelevant factual assertions—including events after September 2018, which are irrelevant because even if considered red flags they would not make Colleen's claims untimely.

Thomas, as President of NBC, now admits the Option is forged. He contends that because it took so long for anyone else to discover the forgery, he, as its sole beneficiary, should get to keep its fruits. Thomas boldly claims that he did not know of the forgery because he was focused on profits *rather than compliance with the law*, but then argues that *his own behavior* was so suspicious that it should have constituted a red flag to Colleen. He testified: "[I]n our business, people fall on problems because they think about these other things that are important. There is

only one thing important, that's a tenant. It's leasing. If I can lease, I can hire people like Kevin Shannon, I can defend myself." A224 at 54:5-9; 56:8-12, 101:22-25. For someone who gave sworn testimony that he did not commit or even have knowledge of the forgery that gave him the right to own all of NBC for $1,500, the argument is breathtaking in its audacity.

Affirming the present ruling potentially establishes two troubling precedents: first, it could decrease protections for victims of inherently unknowable frauds and create perverse incentives by rewarding fraudsters for the sophistication of their fraud; and second, it could shift an inappropriate amount of the responsibility for vigilance against corporate fraud from directors and officers to passive stockholders. These new precedents would not only challenge established legal principles but also threaten the equitable balance of corporate governance and stockholder rights in Delaware.

ARGUMENT

I. THOMAS FAILS TO DISTINGUISH THE CASES THAT SUPPORT REVERSAL.

In apparent recognition that a close application of the law does not support his position, Thomas makes only the most minimal effort to distinguish the cases Colleen applies in her brief, and his effort fails.

Thomas attempts to dismiss this Court's statements of the law in *Coleman v. PricewaterhouseCoopers, LLC*, 854 A.2d 838 (Del. 2004) on the grounds that the case was on appeal from summary judgment, but that is of no moment. Black-letter law does not change based on the stage of the case. Thomas's attempts to dismiss *Carsanaro* and *Weiss* because the court's analysis was at the motion to dismiss stage are similarly misguided. *Carsanaro v. Bloodhound Tech., Inc.*, 65 A.3d 618 (Del. Ch. 2013), *abrogated on other grounds by El Paso Pipeline GP Co. v. Brinckerhoff*, 152 A.3d 1248, 1264 (Del. 2016); *Weiss v. Swanson*, 948 A.2d 433 (Del. Ch. 2008). Motions to dismiss are decided as a matter of law, and Colleen's challenge is to the Court of Chancery's application of that law: that Colleen's facts are proven and those in *Carsanaro* and *Swanson* were allegations does not change the legal standard to be applied.

Carsanaro and *Weiss* set forth the legal standards for what constitutes a "red flag" and what constitutes a "diligent inquiry" for purposes of applying laches. And they support reversal here. *Carsanaro* holds that the duty to conduct a "diligent

inquiry" does not require investors to obtain and sort through corporate filings and compare different sections of the same document to identify wrongdoing:

> Equitable tolling likewise applies to the failure to adjust the conversion prices for the Reverse Split. If a preternaturally industrious stockholder *had thought to access the Secretary of State website*, paid to obtain copies of the pre- and post-amendment charters, *and carefully compared pre-amendment Subsections IV.B.4.b.(i)-(iv) with post-amendment Subsections IV.B.4.a.(i)-(iv)*, a stockholder theoretically might have noticed that the conversion prices remained the same. *But stockholders need only be reasonably diligent*. They are *not required to examine every managerial act with a jaundiced eye,* independently obtain and *cull through corporate filings*, and figure out the implications of four numbers in 27 pages of dense, single-spaced, legal text.

Carsanaro, 65 A.3d at 645 (emphasis added). In saying otherwise, Thomas mischaracterizes the standard *Carsanaro* applies: he combines steps taken to investigate *different* claims ("constant monitoring" and "figuring out the implications of four numbers") to inflate the amount of diligence that *Carsanaro* said was too much to expect of a stockholder. RB at 32.

Here, the diligent inquiry standard did not require Colleen to obtain NBC's corporate records, which she did not believe she had a right to—and which until late 2018 existed only in NBC's private files—and cull through many *different* documents examining signature blocks when she did not even suspect a cut and paste forgery had been employed as the mechanism of the fraud. Indeed, *Weiss* expressly held that the claimant was not required to cull through multiple documents, noting that in cases where laches was applied, all the necessary information had appeared

in a single document. *Weiss*, 948 A.2d at 451. And even once NBC's corporate records had been produced in this litigation, that only makes the situation *more* like *Carsanaro*, where the relevant materials were available to the stockholders. Colleen, having already determined that the signature on the Option matched how she signed her name at that time, was not required to (1) make the assumption that someone in the family company might have committed a cut-and-paste forgery, (2) cull through hundreds of corporate records to find those bearing her signature, and (3) compare each such record to the Option in order to identify a cut-and-paste forgery she did not know existed.

Further, Thomas's suggestion that identifying the forgery did *not* rest on culling through numerous documents (which both *Carsanaro* and *Weiss* disavow) would have required Colleen assume that inconsistencies in the date and place the Option was signed indicated not that NBC's recordkeeping was sloppy—which she knew to be true—but rather that she was defrauded out of her shares by a member of the closely-held family corporation. But seeing the Option's minor defects standing alone as a "red flag," as an indicator of "wrongdoing" that put Colleen on notice of fraud, takes a far more "jaundiced eye" than the law requires. *See Carsanaro*, 65 A.3d 618. Colleen knew NBC was not focused on corporate compliance and recordkeeping, and Thomas admits that was true. RB at 39. She knew she would sign whatever her family needed her to sign in 1988. She was not

required to take such a jaundiced eye toward her own family as to assume her brother had presented her with a forged document, especially when such errors were consistent with countless otherwise legitimate NBC records. Further, all of the flaws in the Option were equally known by Thomas. Thomas also does not remember attending the meeting or signing the Option, but his duties and his resources to identify a problem were far greater: he was Colleen's fiduciary, the President of the Company, and had the company's lawyers and accountants review the Option. As Thomas himself testified, "I didn't know [the Option] was fabricated. How would [Colleen] know?" A231 at 84:2-9; A218 at 30:5-31:9, A233 at 92:10-19. Yet he argues—and the Court of Chancery accepted—that she should have known.

Thomas's response to Colleen's discussions of *Dean Witter* and *Pomeranz* is similarly unconvincing. *In re Dean Witter P'ship Litig.*, 1998 WL 442456 (Del. Ch. July 17, 1998), *aff'd*, 725 A.2d 441 (Del. 1999); *Pomeranz v. Museum P'rs, LP*, 2005 WL 217039 (Del. Ch. Jan. 24, 2005). Colleen discussed their facts at length in her opening brief, and Thomas does not even address them. Rather, he simply cites the fact that Colleen knew she would not have attended a meeting in Florida while at school in Indiana, and concludes that due to that and the other minor inconsistencies previously discussed, Colleen was on inquiry notice of fraud. As addressed above, that does not suffice to trigger inquiry notice.

Finally, Thomas suggests that Colleen's reliance on *Technicorp International II, Inc. v. Johnston*, 2000 WL 713750, at *7 (Del. Ch. May 31, 2000) is misplaced, but then proceeds to cite aspects of the case that have no bearing on the proposition for which Colleen cites it. *Technicorp* stands for the proposition that, contrary to Thomas's strenuous arguments, a mere reason to "suspect wrongdoing of some kind" does *not* constitute a red flag and does *not* trigger inquiry notice. *Id.* Rather, it is only when the claimant knows or reasonably should know of "the specific facts giving rise to the claims in [the] action" that the claim begins to accrue. So too here. Colleen's counterclaim is not premised on the potential voidability of the Option based on technical flaws. She has never asserted such a claim and testified that she had no interest in doing so. A257 at 187:14-22 ("This is a family business. . . . [N]o one appears to be dotting Is, crossing Ts. Sloppiness is not something that" Colleen would raise in a lawsuit against her own family.) The technical flaws neither gave rise to, nor put her on notice of, her claim in this matter, which is premised on fraud committed by cut-and-paste forgery. Even if these technical flaws could have given rise to a books and records action—which Thomas's mere footnote assertion does not establish—she was not required to *file* such a books and records action to preserve her right to later bring the far more serious claim of fraud. Such a requirement goes far beyond the standard of a diligent inquiry. *See Carsanaro,* 65 A.3d 618; *Weiss*, 948 A.2d at 451.

Notably, while Thomas cites general language from cases and argues they support his position, he offers no real analysis of the facts of any of these cases and provides no case that serves as an example for what is appropriate given the facts here. Colleen, to the contrary, has offered significant analysis of on-point cases (above and in her Opening Brief) that show reversal is appropriate under these facts.

II. THE FACTS THOMAS STRESSES DO NOT ESTABLISH THAT COLLEEN WAS FACED WITH RED FLAGS OR THAT A DILIGENT INQUIRY WOULD HAVE REVEALED THE FORGERY EARLIER.

The deluge of facts set forth in Thomas's brief does not change his key admission on the stand that if he did not know about the fraud, there was no way for Colleen to know. And if that is the case, her claim should proceed. That the Court believed Thomas's testimony on this point does not preclude Colleen from succeeding on her fraud claims against Thomas (*see* RB 3). The standard for equitable fraud is knew or *should have known*. *See In re Wayport, Inc. Litig.*, 76 A.3d 296, 327 (Del. Ch. 2013). And even for common law fraud Thomas need not have *known* or intended to defraud Colleen: the standard requires only reckless indifference. *Id.* at 323.

Thomas repeatedly stresses three particular facts to show Colleen was on inquiry notice, but none of them are convincing. ***First***, he stresses that Colleen testified she had "always known" that she had not signed a document in Florida while at school in Indiana. That does not mean she was on inquiry notice of fraud, nor that she did not sign the document. Colleen did not, as he suggests (RB 40), testify that she always knew the document *was fraudulent*. As discussed above, while Colleen knew she was not in Florida at that time, she also knew that when she was 19 and her father or older brother asked her to sign something relating to the family business, she would without question.

Second, the December 2017 Partnership Memorandum[2] and Settlement Term Sheet do not demonstrate knowledge of a fraud resulting from a cut and paste forgery. They reflect that Colleen had learned in or around December 2017 that Michael believed his signature on the 1988 option was a forgery of his written signature. A242 at 128:16-129:13. This caused Colleen and her husband to question her signature, and the other flaws in the document—the date, that it was supposedly signed in Florida—took on a new light as potentially supporting evidence of something far worse than informal recordkeeping. Their suspicions (alongside Michael's) are reflected in the Partnership Memorandum and the Settlement Term Sheet drafted at that time. The Settlement Term Sheet, which was drafted by Tom McGuigan—who is not an attorney—at the request of Norbert Murray, therefore added releases of any and all claims, including "fraud." Clearly, Colleen, and her husband Tom, had no knowledge of a cut-and-paste forgery at that time.

To follow Thomas's argument in his answering brief regarding what Colleen should have done, one must ask what the next passive stockholder who suspects

[2] Contrary to Thomas's argument, Colleen did not "ignore critical language" in the Partnership Memorandum that the trial court quoted at Op. 14-15. (*See* RB at 27.) Thomas himself does not even bother to quote this supposedly critical language, which is a passage stating that "there are lots of problems with the option" and discussing the Option's recordkeeping flaws: that it was dated before NBC was actually formed, some of the shareholders did not recall signing it and were not in Florida on that date, etc. Colleen referenced this very language in her opening brief, in explaining that the Memorandum relied on the same type of recordkeeping glitches that Colleen was already aware of. (OB 38, citing A555-56.)

fraud will be required to do in Delaware. Must one forego any personal and logical investigation of the matter and move directly to engaging expensive experts to investigate? (Though even that would not have helped here, because engaging a handwriting expert would have led to the same conclusion that Colleen reached—that it was her signature.) Must a stockholder file a prophylactic lawsuit based on suspicion, risking sanctions for a bad-faith pleading, hoping to find something in discovery? None of those steps are or should be required.

Colleen did exactly what the law prescribes: she investigated. She searched for exemplars of her signature from nearly thirty years ago, before she got married and changed her name. A246 at 142:14-21; A727-28. This was no simple task (contrary to Thomas's suggestion)—not many people have a store of 30-year-old documents, especially from before the widespread use of computers—but she managed to find two such exemplars and compare them to the Option. A246 at 143:1-24. The signatures were entirely consistent, and that reasonably led her to believe that her signature was genuine. *Id.* Minor flaws which had appeared suspicious in light of the possibility of a forged signature regained their normal appearance as typical instances of imprecise NBC recordkeeping. As discussed above, this reflected reasonable diligence, and no more was required. Further, though Thomas argues that Colleen did not need to know every fact about the fraud to be on inquiry notice, Colleen is not arguing that she needed every fact. Even still

there are many facts she has not uncovered: when the forgery was created, when it was placed in NBC records, who created it (if not Thomas, its sole beneficiary), and when Thomas first became aware of its existence.

Third, when Colleen read Michael's Complaint in or around June 2018, that provided no new material information—Colleen already knew that Michael believed his signature was forged. But at this point Colleen had conducted her own investigation and confirmed that her signature matched. Thomas says Colleen should have been more suspicious of *him*, Thomas, at this point because Colleen signed the 2006 agreement in reliance on Thomas's 2006 representation to her that all the family members signed, and Michael was saying in his Complaint that he had not in fact signed. RB at 28. That Thomas makes this brazen argument highlights the inherent, inequitable contradiction in his position: he both maintains that he had nothing to do with the forgery of the Option he exercised, and simultaneously that Colleen *should have believed he made false representations to her*. The narrative underlying Thomas's defense that he did not know the Option was forged until this litigation—that he acted in good faith at all times—means that there could be nothing nefarious about his prior attempts to secure Colleen's shares. He cannot now argue that his earlier "good faith" attempts to secure his family's shares were red flags indicating an attempted swindle.

Finally, Thomas devotes several pages to pointing out "flags" occurring after September 2018. These are irrelevant. The Court of Chancery found that Colleen was on inquiry notice of the fraud sometime prior to September 2018. The statute of limitations, which the Court of Chancery applied by analogy, is three years, and September 2018 is three years before Colleen brought her claims. Events taking place thereafter are not relevant for purposes of determining that Court of Chancery erred in making its finding. This includes Thomas's attempt to use Colleen's invocation of the attorney-client privilege, when asked why she filed her counterclaims when she did, as a sword to draw a negative inference—the Court of Chancery appropriately ignored that argument and made no such finding.

III. DELAWARE COURTS WOULD HAVE REFUSED TO ENTERTAIN COLLEEN'S CLAIMS EARLIER.

Thomas fails to rebut Colleen's argument that she could not have brought her fraud and breach of fiduciary duty claims earlier because Delaware courts would have dismissed them. He asserts that Colleen testified that she only cared about her signature, as opposed to the inconsistencies in the Option, but does not cite any case or otherwise show that she could have brought a fraud claim (1) based on those flaws, (2) based on someone else's assertion that their own signature was forged, or (3) based on the results of the diligent investigation she conducted when she entertained suspicions that her signature was also forged—which showed that the signature on the Option was, in fact, her own. Had Colleen filed an action in the Court of Chancery claiming ownership in her NBC shares because she may have been out of town on the date of the Option, it would have been dismissed as a bad-faith attempt to secure a windfall on Colleen's part. But upholding the ruling here would require all passive shareholders of privately held family corporations to run to the courthouse when dates or attendance of corporate meetings are not strictly attended to. That is entirely inconsistent with Delaware policy and should not be enshrined in Delaware law.

Thomas boldly asserts that upon discovering the inconsistencies in the Option, Colleen was required to file a books and records claim in order to preserve her fraud claim. But he provides no legal support whatsoever for this assertion, which is

contradicted by standards for a diligent inquiry set forth in *Carsanaro* and *Weiss*, discussed above. *Carsanaro,* 65 A.3d 618; *Weiss*, 948 A.2d at 451. Thomas separately asserts, in a footnote, that Colleen *could* have brought a books and records action based on the inconsistencies in the Option, but that falls well short of showing she was *required* to bring such an action in order to conduct a diligent inquiry and preserve a logically unforeseen fraud claim. Further, the single case Thomas cites for this proposition does not support it. *See Deephaven Risk Arb Trading Ltd. v. UnitedGlobalCom, Inc.*, 2005 WL 1713067, at *9-10 (Del. Ch. July 13, 2005) (cited at R.B. at 35 n. 10). Rather, it establishes that (1) a books and records claim must be justified with good cause to think something was seriously wrong, which the minor errors on the Option do not provide, and that (2) even then only limited discovery is allowed, and (3) only of records relevant to the claim. *Id.* Thomas utterly fails to explain how Colleen could have known *what records to ask for* in a books and records action to unearth evidence of the cut-and-paste forgery that *she did not know occurred*. The document from which the signatures were lifted was a waiver of notice to a *different* board meeting than cited on the face of the forgery itself. (*Cf.* A380, A538.) This was a needle in a haystack, and Colleen did not even know she was looking for a needle.

Thomas believes that filing a books and records action would have resulted in discovery of the fraud because "Colleen contends the Cut and Paste was 'obvious'

from of review of those records." RB at 35. This entirely misrepresents her testimony and approaches a bad faith representation to this Court. Once the proper source document was identified, and someone thought to compare it to the Option to determine if a cut-and-paste forgery occurred, *then* it was "obvious" the signatures on the Option were forged. The mere production of the document did not make the fraud "obvious." Further, Colleen has never brought, and had no interest in bringing, claims of corporate "foot faults." (A257 at 187:14-22 "This is a family business. . . . [N]o one appears to be dotting Is, crossing Ts. Sloppiness is not something that" Colleen would raise in a lawsuit against her own family.) Further, the trial court had already established at the summary judgment stage that NBC's records were sloppy and inconsistent. A74, A91 (explaining that NBC's "recordkeeping was informal and, at times, it resulted in inconsistencies," and later referring to the company's "poor recordkeeping").) For Colleen to claim that the non-meetings and vague dates were fraud, instead of sloppiness, would have been illogical. However, her desire not to be embroiled in litigation with her own brother over minor inaccuracies that were consistent with NBC's historical operating methodology should not bar her from bringing a claim of actual fraud upon its discovery.

Thomas then argues that because Michael's claim was able to proceed, Colleen's could have proceeded as well. This is a misguided analogy. As Thomas's counsel argued in open court, Colleen's and Michael's cases could not be more

different. First, unlike Colleen, Michael did not bring *fraud* claims against Thomas, so he was not required to meet the heightened pleading standard for fraud. Second, Michael contended that he had never signed over his shares, enabling him to bring claims based on his standing as a stockholder. Colleen, on the other hand, believed that she was no longer a stockholder. Third, unlike Michael, Colleen could not in good faith have alleged that she never signed the Option—until she saw the cut-and-paste. She was not going to allege she never signed the 1988 Option when, in fact, she believed she would have signed such a document when asked, just to file earlier, nor should the Court promote a rule that would encourage litigants to do so.

Finally, as Colleen showed in her opening brief, even if she *could* have brought a different claim earlier, based on the technical flaws in the Option, requiring her to do so contravenes Delaware law and policy. Delaware courts do not issue opinions on matters that have "yet to become a 'real world' problem." *XL Specialty Ins. Co. v. WMI Liquidating Tr.*, 93 A.3d 1208, 1220 (Del. 2014). Further, Delaware disfavors interfering in unripe corporate disputes "[if] facts are still unknown or changing" for fear of offering a "premature binding decision." *See S'holder Rep. Servs. LLC v. DC Cap. P'rs Fund II, L.P.*, 2022 WL 439011, at *7 (Del. Ch. Feb. 14, 2022). Thomas's only response is a conclusory assertion that this is not so—without any legal support.

IV. THE HEARING ON THOMAS'S DEFENSE OF LACHES WAS LIMITED IN SCOPE.

Thomas argues throughout his answering brief that the Court of Chancery's findings preclude claims of fraud against Thomas, as if there has been a substantive determination surrounding Colleen's claims. The Court of Chancery's focus was narrowly confined to determining if Colleen had inquiry notice of the alleged fraud and Colleen has limited her arguments in her opening brief and here to those issues. For this reason, Colleen's arguments do not delve deeply into whether Thomas breached his fiduciary duties by utilizing a forged option, which he does not recall signing, that transferred 78% of the family company to himself. Moreover, the trial did not primarily aim to establish Thomas's culpability in the fraud, whether through executing, being aware of, or being reasonably expected to be aware of the forgery.

While the Court of Chancery accepted Thomas's testimony that he only became aware of the potential forgery during this litigation, Colleen's case was not centered on contesting this point. In fact, for purposes of the laches hearing, Colleen believed that testimony favored her. Colleen ultimately hopes for an opportunity to fully litigate the case on its merits, presenting evidence that the cut-and-paste forgery should have been known to Thomas at some point during the thirty-year history of NBC, if not at the outset.

CONCLUSION

If this Court affirms the Court of Chancery's grant of judgment in Thomas's favor, he will have secured Colleen's interest in NBC (as well as that of other stockholders) using a fraudulent document that worked entirely to his benefit, and then prevented Colleen from obtaining relief by arguing that she should have known of the fraud earlier when he testified before the Court that himself did not know the 1988 Option was fabricated. A233 at 92:10-19. Colleen therefore requests that this Court reverse the judgment of the Court of Chancery, hold that her claims are timely, and allow her claims to proceed to the merits.

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