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Case Number 232,2024

IN THE SUPREME COURT OF THE STATE OF DELAWARE

VILLAGE PRACTICE MANAGEMENT COMPANY, LLC,	)	
Defendant Below, Appellant,	)	No. 232, 2024
v.	)	
RYAN WEST,	)	Court Below: Court of Chancery of the State of Delaware, C.A. No. 2022-0562-MTZ
Plaintiff Below, Appellee.	)	

APPELLANT'S REPLY BRIEF

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TABLE OF CONTENTS

Page

TABLE OF AUTHORITIES

Page(s)

Cases

Statutes

Other Authorities

PRELIMINARY STATEMENT

As West argues in his answering brief, the language of the Plan is indeed both plain and clear, but not as West contends. Upon invitation by VPM, certain "Employees" and "Contractors" become "Participants" in the Plan through their receipt and acceptance of Class B Units or other ownership interests. Likewise, under the Award Agreements' definition, West became a "Participant" by virtue of being named as the "participant" on the first page of that Agreement. Once a "Participant," individuals like West enjoy a number of privileges and become subject to a number of obligations under the terms of the Plan and the Award Agreements for so long as they continue to hold Class B Units, vested or unvested. Under the express terms of the Plan, VPM may cancel or repurchase some or all of a Participant's Class B Units if that individual engages in "Detrimental Activity" at any time. This interpretation of the contractual language is logical, reasonable, and mirrors the ordinary dictionary definition of "participant."[1]

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[1] *See* https://www.merriam-webster.com/dictionary/participant (defining "participant" as "one who participates"); https://www.merriam-webster.com/dictionary/participate (defining "participate" as "take part" or "have a part or share in something"). As this definition provides, by maintaining possession of vested Class B Units following the separation of his employment with VPM, West continued to "take part" and "have a part or share in" the Plan. Notably, the definitions of "Participant" in both the Awards Agreement and Plan include the lower-case word "participant," further supporting that the parties intended this common-sense meaning to apply.

What is less than reasonable is West's vacillation on whether he is or is not a "Participant," seemingly depending on which way the wind blows. For example, West expressly argues at the outset in his brief that, as a former employee, he is not a "Participant" subject to the Forfeiture Provision. (Appellee's Answering Brief ("Answering Br.") at 4.) Tellingly, West makes no attempt to identify what his status was under the Plan as a former employee who possessed vested Class B Units if it not that of a "Participant." Elsewhere in his brief, West asserts his rights with respect to his "***vested*** Class B Units" while ignoring the fact that under the Plan, only "Participants" can hold Class B Units, vested or otherwise. (Answering Br. at 1, 6, 23.)

West makes no attempt to resolve this disconnect, nor does he provide this Court with a roadmap for doing so. This is because no resolution exists. West cannot credibly claim that he was no longer "participating" in the Plan—as that word is ordinarily used— just because his Class B Units had vested and his employment had ended. Nor does he explain how he would no longer fit within the Award Agreements' definition of "Participant." The plain language of the Awards Agreement and Plan makes clear that West remained a "Participant," with all the privileges and responsibilities attached thereto, as a former employee who held vested Class B Units. Because this is the only reasonable interpretation of the Plan

and Award Agreements, the Court should reverse the decision of the Chancery Court and restore VPM's right to enforce the Forfeiture Clause.

West answering brief also fails to establish any reasonable basis for the Court of Chancery's denial of VPM's request for a stay or its grant of West's request for attorneys' fees. There is no logical way to distinguish between the applicability of the *Terrell* decisions to West's claims and the claims in the *Page* matter, so the Court of Chancery's diametrically opposed decisions in those two cases cannot stand. Finally, the Court should reverse the Court of Chancery's award of attorneys' fees as improper under the plain language of the Fee Clause.

In sum, VPM is not asking this Court to rewrite the parties' agreements. Instead, VPM asks this Court to enforce the Equity Documents as written and as intended, and to reverse the decision of the Court of Chancery.

ARGUMENT

I. VPM'S INTERPRETATION IS UNQUESTIONABLY REASONABLE

West's answering brief fails to demonstrate that VPM's interpretation of the Equity Documents was unreasonable, which was his burden under this Court's precedent for judgment on the pleadings. *See Ford Motor Co. v. Earthbound LLC*, 2024 WL 3067114, at *13 (Del. June 20, 2024) (judgment on the pleadings improper when contractual provisions "have multiple reasonable interpretations;" "At the pleadings stage of a contract dispute, the Court cannot choose between two differing reasonable interpretations of ambiguous contract language"); *GMG Cap. Invs., LLC v. Athenian Venture P'rs I, L.P.*, 36 A.3d 776, 783 (Del. 2012) ("[W]here [two] reasonable minds could differ as to the contract's meaning, a factual dispute results…In those cases, [judgment as a matter of law] is improper.") (citations omitted); *ITG Brands, LLC v. Reynolds Am., Inc.*, 2019 WL 4593495, at * 9 (Del. Ch. Sept. 23, 2019) (same); *Appriva S'holder Litig. Co., LLC v. EV3, Inc.*, 937 A.2d 1275, 1292 (Del. 2007) ("Even if the Court considers the movant's interpretation more reasonable than the non-movant's on a 12(b)(6) motion it is error to select the 'more reasonable' interpretation as legally controlling.") (cleaned up)). On this basis alone, the Court should reverse the Court of Chancery's decision.

II. WEST WAS A PARTICIPANT SUBJECT TO FORFEITURE REMEDIES FOR VESTED CLASS B UNITS

West's theory that only vested Class B Units of current employees are subject to forfeiture (*see* Answering Br. at 8-9) contradicts the Award Agreements' plain language and finds no support in any of the Equity Documents. Nothing in the applicable agreements limits the Forfeiture Clause in this way. The Court should decline West's invitation to add limitations that appear nowhere in the text.

At the outset, West erroneously asks the Court to ignore the definition of "Participant" in the Award Agreement—which simply defines "Participant" as "the participant identified on the cover page" (*i.e.*, West), with no reference to employment status—in favor of the Plan's definition because the Award Agreements state that "[c]apitalized terms not defined herein shall have the meanings attached to such terms in the Plan or in the Notice of Grant." (*See* Award Agreement p. 1; Answering Br. at 20.) In doing so, West overlooks the phrase "not defined herein." "Participant" is, in fact, "defined herein" in the first paragraph of the Award Agreements. (*See id.*) While West is wrong that the Plan's definition of "Participant" is limited to current employees (*see* Opening Br. at 15, 18), his case would fail under the Award Agreements' definition even if he were right about the Plan's definition, as West does not and cannot explain how the Award Agreements' definition of "Participant" requires him to be a current employee to retain "Participant" status.

The remaining provisions of the Award Agreements and Equity Documents confirm that "Participant" status continues post-employment. Section 4(a) of the Award Agreements expressly states that "[i]n the event of the Participant's Termination of Service for Cause ***or*** upon the Participant's commission of a Detrimental Activity, ***all*** the Class B Units, ***vested and unvested***, shall immediately terminate and be forfeited without payment therefore." (Award Agreements § 4(a) (emphasis added).) This clause states that both "vested" and "unvested" units are forfeited upon either "the Participant's Termination of Service for Cause" or "the Participant's commission of a Detrimental Activity." (*See id.*) Under Section 4(a)'s plain terms, forfeiture is not limited to "unvested" units, nor is it limited to a Termination of Service for Cause or to Detrimental Activity occurring during employment. This is consistent with Section 8(b) of the Plan, which provides that "[u]nless otherwise determined by the Committee and set forth in the applicable Award Agreement, an Award shall terminate and be cancelled for no consideration on the date on which the Participant engages in a Detrimental Activity," and which likewise places no time limit on when cancellation can occur and provides no protection from cancellation for vested units held post-employment. (*See* Plan § 8(b).) West seeks to impose limitations that appear nowhere in the text.

West's reading of Section 4(b) of the Award Agreements as somehow limiting the Forfeiture Clause to pre-termination conduct (Answering Br. at 22-23) is equally

unavailing. Section 4(b) states that in the event of the "Participant's Termination of Service for any reason other than for Cause, all unvested Class B Units shall immediately terminate and be forfeited without payment therefore and all vested Class B Units shall be subject to the repurchase rights of the Company or its designee as set forth in Section 9 of the Plan." (Award Agreements § 4(b).) Nothing in this clause suggests that repurchase rights—which are rights belonging to VPM under the Plan, not to West—are VPM's sole and exclusive post-employment remedy with respect to vested Class B Units. *See, e.g., Leaf Invenergy Co. v. Invenergy Renewables LLC*, 210 A.3d 688, 704 n. 54 (Del. 2019) ("Nothing in [the applicable provision] provides that it was the sole or exclusive remedy"); *Reid v. Thompson Homes at Centreville, Inc.*, 2007 WL 4248478, at *5 (Del. Super. Nov. 21, 2007) ("[E]ven if a contract specifies a remedy for breach of that contract, a contractual remedy cannot be read as exclusive of all other remedies if it lacks the requisite expression of exclusivity"). Merely saying that vested units are subject to a contractual remedy belonging to VPM does mean VPM cannot enforce ***other*** potentially available remedies, including the right in Section 4(a) of the Award Agreements and Section 8(b) of the Plan to declare forfeiture of vested Class B Units upon a Participant's commission of Detrimental Activity any time.

Further, West's acknowledgment that VPM would retain the right to repurchase his units under Section 9 of the Plan after a termination without cause

(*see* Answering Br. at 8-9) undercuts his assertion that "Participant" only means current employees, as Section 9 of the Plan uses the word "Participant" to encompass post-employment rights and occurrences. For example, Section 9 states the "effective date of any repurchase under this **Section 9** shall be the date on which the Company ***remits the payment amount to the Participant*** (or his or her legal representative, beneficiary or estate). . . ." (Plan § 9(a) (emphasis added.) This language would make no sense if "Participant" status vaporized upon termination of employment, as there would be no "Participant" to whom VPM could remit payment post-employment.

West also argues that ***some*** descriptions of post-employment obligations in Section 9 of the Plan could be read as simply reflecting an agreement made by West as a "Participant" at the time of the Awards Agreement "to take certain action *after* [he] cease[d] to be a Participant" (*See* Answering Br. at 31-32). However, most of the relevant Plan language cannot plausibly be read in such a manner, including the payment provision described in the prior paragraph. For example, Section 9(a) dictates that VPM can repurchase Class B Units long after "the Participant's Termination of Service." (Award Agreements § 9(a).) Under the illogical interpretation offered by West and the Court of Chancery, VPM could not repurchase Class B Units from a former employee because their "Termination of Service" would automatically divest them of their status as a "Participant," which is

the only category of individual entitled to repurchase. Similarly, Section 9(c) of the Plan references a "notice to the Participant" (which, again, would necessarily be sent post-employment). (Award Agreements § 9(b).) Contrary to West's contentions (Answering Br. at 34), each of these provisions involve ***express*** "reference[s] to [] former employee[s] being recognized as [] Participant[s]" in the Equity Documents.

Other examples abound. The Awards Agreement and Plan repeatedly use the word "Participant" to describe who receives notices and distributions under the Plan and who can make elections with respect to beneficiaries. These statement include in Section 5(b)(ii) of the Plan that "[d]istributions in respect of Awards of Class B Units shall be made to a Participant," the restrictions in Section 10 of the Plan on "each Participant" in the event of a public offering, and the provision in Section 17 of the Plan allowing a Participant to name death beneficiaries "from time to time" at any point "during his or her lifetime." (*See* Opening Br. at 15-17.) The same is true for numerous statements in the Award Agreements, including but not limited to the requirement in Section 5 that "the Participant shall deliver the certificate(s) (if any) representing the Class B Units and will take all other steps as provided in Section 9(c) of the Plan to facilitate the consummation or the repurchase" (which, again, is something that would occur post-employment) and the provision in Section 9 that "the Participant will be subject to the 'lock-up' requirements set forth in Section 10 of the Plan" in the event of a future offering. (*See* Opening Br. at 10-14.) These

provisions all necessarily contemplate that West remains a Participant post-employment, as otherwise he would no longer be entitled to receive these benefits or make these decisions.

West also has no compelling response to the inclusion of "the breach of any Restrictive Covenant" language—which by definition includes "severance agreement" violations that could only logically occur post-employment—in the Plan's definition of "Detrimental Activity," other than to argue that, in West's view, no "Restrictive Covenant" was actually signed or violated here. (*See* Opening Br. at 25-26; Answering Br. at 25, 28.) Whether West was in fact subject to a Restrictive Covenant has no bearing on whether "Participant" as used in the Award Agreements and Plan can be reasonably interpreted as only applying to current employees. West has no answer for how "Detrimental Activity" can plausibly only mean pre-termination activity when the definition ***specifically includes conduct occurring after separation***, nor can he explain how it is reasonable to construe "Participant" as only a current employee in the context of committing "Detrimental Activity"—a category that is defined to include conduct that necessarily would occur post-employment. In addition, West's assertion that "[t]he Equity Documents here never even mention post-employment competition" (Answering Br. at 26) is simply inaccurate, as the definition of "Detrimental Activity" expressly includes post-severance conduct. A25.

Further, while West cites cases addressing restrictive covenants in the context of an employment agreement (*see* Answering Br. at 25), Delaware law does not subject equity forfeiture provisions for LLC units to the same requirements as restrictive covenants in employment agreements. (*See* Opening Br. at 22.) Indeed, the lead case West cites for the proposition that "forfeitures are disfavored" make clear that if a contractual provision addresses the pertinent issue, "then the contract controls."[2] And regardless, this Court has clarified that "the common law's disfavor of forfeiture" does not extend to entities governed by statutory regimes like the Delaware Revised Uniform Limited Partnership Act, which contains substantially similar freedom-of-contract and forfeiture provisions as does the LLC Act. (*See* Opening Br. at 33.)

Unlike in the cases cited by West, there is no special requirement that an equity forfeiture provision be conspicuous—although the provision here was clear and hard to miss—or subject to detailed time-and-scope limitations. While West concedes that *Ainslie* decision would apply had VPM "expressly provided for a two-year post-employment prohibition on competition in order to retain vested Class B Units" (Answering Br. at 28), the whole point of that decision was that forfeiture clauses in the partnership (and, by extension, the LLC) context need not contain the

[2] *See Domain Assocs., L.L.C. v. Shah*, 2018 WL 3853531, at *9 (Del. Ch. Aug. 13, 2018).

same express metes and bounds required of non-competition clauses in employment agreements. *See Cantor Fitzgerald v. Ainslie*, 312 A.3d 674, 692 (Del. 2024) (holding that equity forfeiture provisions "should enjoy this court's deference on equal footing with any other bargained-for-term"). To be sure, West did violate a non-competition provision—thereby engaging in Detrimental Activity—by working for a competitor while owning interest in VPM, but whether this falls under the Plan's definition of Restrictive Covenant has no bearing on whether the forfeiture provisions are enforceable or should be rewritten to include only current employees.[3]

Defendants' interpretation of "Participant" is also consistent with the ordinary Merriam-Webster definitions of "participant" (one who "participates") and "participate" (to "take part" or "have a part or share in something").[4] Former employees who retain vested Class B Units plainly continue to "take part" and "have a part or share in" the Plan. It defies common sense to say that someone who continues to hold equity governed by the Plan, with enforceable rights and obligations set forth in the Plan, is no longer a "participant" in the Plan. The

[3] West argues that VPM's second issue on appeal—whether the Court of Chancery erroneously reviewed the challenged provisions for reasonableness —is a nullity because the Court of Chancery disclaimed any ruling on the issue. (*See* Answering Br. at 35-36.) To the extent an erroneous approach to the issue addressed in *Ainslie* infected any portion of the Court of Chancery's judgment, however, it is reversible error.

[4] *See* https://www.merriam-webster.com/dictionary/participant; https://www.merriam-webster.com/dictionary/participate.

inclusion of the lower-case word "participant" in both the Award Agreements' and Plan's definitions of "Participant" further supports Defendants' common-sense construction over Plaintiffs' artificial employment-based distinction.

In short, West cannot escape that his construction of "Participant" in the "Detrimental Activity" provisions of the Award Agreements and Plan is contrary to how "Participant" is used everywhere else in those agreements, as well as to the common-sense meaning of the word. West's inconsistent interpretation of "Participant" violates the bedrock contract construction principle that the same term should not have different meanings in different parts of the same agreement.[5] The definition of "Participant" in the Award Agreements makes no reference to employment status. Further, the only plausible interpretation of the Plan's definition (in light of the way "Participant" is used throughout that document) is that one must be an "Employee" or "Consultant" at the time one is "designated" to be a Participant,

[5] *See* Opening Br. at 23; *Terrell v. Kiromic Biopharma, Inc.*, 2024 WL 370040, at *7 (Del. Ch. Jan. 31, 2024) (*Terrell III*) (applying rule that "identical words used in different parts of the same agreement are presumed to 'bear the same meaning throughout'") (internal citations omitted); *JJS, Ltd. v. Steelpoint CP Hldgs., LLC*, 2019 WL 5092896, at *6 (Del. Ch. Oct. 11, 2019) ("[A]bsent anything indicating a contrary intent, the same phrase should be given the same meaning when it is used in different places in the same contract."). Indeed, in his answering brief, West acknowledges that courts "must construe [agreements] as a whole, giving effect to all provisions therein." Resp. Br. at 19 (citing *GMG Cap. Invs., LLC*, 36 A.3d at 779.)

not that one who is so designated loses "Participant" status immediately after their employment ends. (*See* Opening Br. at 15, 18.)

Contrary to West's suggestion, this is not a situation where VPM is asking the Court to "imply" terms that do not exist or to "infer into the Equity Documents a post-employment prohibition on competition." (*See* Answering Br. at 27-28.) VPM is simply asking the Court to apply the Forfeiture Clause as written, or at the very least to hold that VPM's construction is sufficiently reasonable to defeat judgment on the pleadings. Section 4(a) of the Award Agreements and Section 8(b) of the Plan provide VPM an express right to obtain forfeiture of West's Class B Units whenever he engages in Detrimental Activity, with no limitation as to time. "Detrimental Activity" is expressly defined to include activities that would likely or necessarily occur after one is no longer employed at VPM. The bargain was a simple and easily understandable one: West would retain his Class B Units as long as he did not work for a competitor or engage in other examples of Detrimental Activity, subject to repurchase rights and other rights and restrictions under the Equity Documents. The Court of Chancery erred in granting judgment on the pleadings to allow West to escape his bargain.

III. THE *TERRELL* DECISIONS WARRANTED A STAY OF THESE PROCEEDINGS

The parties agree on one issue: West challenges (or *questions*) VPM's declaration that he forfeited his Class B Units as of a result of obtaining employment with a competitor. As made clear in *Terrell* and similar cases, including the Chancery Court's decision in *Page*, West's *questions* regarding VPM's actions under the Plan should have first been submitted *by West* to the Committee pursuant to Section 4(d) of the Plan.

Although West acknowledges that both the *Terrell* and *Page* decisions are instructive, his attempts to distinguish those cases falls flat. West seeks to minimize the implications of the *Terrell* decisions on this case by stating only that *Terrell* "involved a very different set of facts." Resp. Br. at 38. In doing so, however, West acknowledges this Court's holding that the "Court of Chancery had properly stayed the action initially" to allow the Committee in that case to make a threshold determination as to the propriety of the challenged action. *Id.* at 39 (citing *Terrell v. Kiromic Biopharma, Inc.,* 297 A.3d 610, 620 (Del. 2023)).

The discussion should end here. The Court of Chancery applied the *Terrell* holding in *Page*—a separate proceeding filed against VPM by a different former employee involving the same Equity Documents and nearly identical claims—and reached the conclusion equally warranted in this case: Section 4(d) required a stay of the proceeding to "afford an opportunity for review of the Committee's legal

determinations" that West forfeited his Class B Units. *Page v. Village Practice Mgmt. Grp., LLC*, 2023 WL 3563049, at *2 (Del. Ch. May 19, 2023).

Specifically, the Court of Chancery found in *Page* that the action should be stayed "**…**to determine ***(i) whether the 'Detrimental Activity Provision' governs the plaintiff's employment after her employment with the defendant is terminated ('post employment activities'); (ii) whether the plaintiff's prospective employer…is a 'Competitor'; (iii) whether the plaintiff remains the holder of her 'Class B Units'; and (iv) whether the defendant has any basis under the Plan to cancel any of the plaintiff's Class B Units.***" *Id*. (emphasis added).

Because there is no logical distinction between *Page* and the present case, there should be no difference in how the Court of Chancery applied *Terrell* in the two cases. In this case, as in *Page*, VPM took action to declare forfeiture of West's Class B Units. West's disagreement with that action should have first been raised *by West*[6] to the Committee. Because West bypassed that step, the Court of Chancery improperly denied VPM's request for a stay.

[6] West's suggestion that VPM should have "submitted" the forfeiture issue to its own Committee is nonsensical. Resp. Br. at 41-42. VPM does not dispute its own actions, nor would it or could it raise any such dispute with itself.

IV. THE FEE AWARD SHOULD BE REVERSED

West's arguments regarding the Fee Award are similarly without merit. His answering brief offers no argument that West would be entitled to fees under Section 12.5 of the Operating Agreement, instead merely acknowledging that the Court of Chancery based its award on Section 12.13. (*See* Answering Br. at 46.) As set forth previously, Section 12.5 does not support a fee award. (*See* Opening Br. at 45-47.) Nor does Section 12.13.

West's entire argument rests on in the following: (1) VPM noted in the Chancery proceedings that "Plaintiff's Class B Unit awards are also subject to the terms and conditions of Defendant's operating agreement" and that the Operating Agreement was part of the "Entire Agreement" governing the awards at issue and (2) VPM included the Operating Agreement as an exhibit in the Court of Chancery proceedings. (Answering Br. at 44-46.) West's argument fails because he does not and cannot cite any specific "provision" of the Operating Agreement that was "validly asserted as a defense," which is required to sustain a fee claim under Section 12.13. *See Bako Pathology LP v. Bakotic*, 288 A.3d 252, 282 (Del. 2022) (denying fees when claims were not based on the agreement containing the fee-shifting provision). West cites no case suggesting that simply referencing and attaching an agreement is equivalent to "validly asserting" a specific "provision" from that agreement as a "defense" to a claim.

West also cites no case suggesting that the phrase "validly asserted as a defense" can reasonably be construed to mean "an alleged defense that, to the extent it was even asserted at all, was insufficient to prevent judgment on the pleadings," let alone that this clause amounts to a "clear and unequivocal agreement" with "specific language" to shift fees. *See Braga Inv. & Advisory, LLC v. Yenni*, 2023 WL 3736879, at *18 (Del. Ch. May 31, 2023) (requiring clear language to overcome the presumption that parties bear their own fees) (quoting *Murfey v. WHC Ventures, LLC*, 2022 WL 214741, at *2 (Del. Ch. Jan. 25, 2022)).

While West quotes ***one*** of the multiple Merriam-Webster definitions for the term "valid" ("well-grounded or justifiable: being at once relevant and meaningful") (Answering Br. at 45), he fails to explain how a defense can be deemed "valid" under even this definition if it is judged insufficient as a matter of law to prevent a pleading-stage dismissal under Rule 12(c). Simply put, if the Court of Chancery viewed any of VPM's defenses as offering a "valid theory," including any purported defense based on a "provision" of the Operating Agreement, the Court of Chancery would not and could not have granted a Rule 12(c) judgment in West's favor. The other Merriam-Webster definitions ignored by West ("having legal efficacy or force," "logically correct," and "appropriate to the end in view") make clear that

"valid" and "insufficient to prevent judgment on the pleadings" are incompatible.[7] Those definitions are also more consistent with how Delaware courts have interpreted "valid" in other contexts. *See, e.g., Braddock v. Zimmerman*, 906 A.2d 776, 779, 786 (Del. 2006) (construing phrase "validly in litigation" as excluding claims that did not survive a motion to dismiss for purposes of assessing demand excusal for derivative complaints); *Chase v. Chase*, 2019 WL 6833958, at *3 n. 23 (Del. Ch. Dec. 13, 2019) ("In the dictionary, 'validity' is defined as 'the state of being acceptable according to the law'").

West's assertion that "prevailed" and "valid" must have drastically different meanings because they are different words (Answering Br. at 46) is also meritless. There are many potential word choices that connote legal success or efficacy. The Court of Chancery's task was to apply the ordinary, common-sense meanings of the terms used, not to adopt unreasonable constructions merely because the Fee Clause includes different words with similar meanings. In the context of this legal proceeding, "validly" cannot reasonably mean "insufficiently meritorious or relevant to stave off a Rule 12 judgment." Nor does West explain how construing "validly" to mean more than "non-sanctionable" would cause any portion of the Fee Clause to be "surplusage."

[7] *See* https://www.merriam-webster.com/dictionary/valid.

In sum, the Court of Chancery erred in construing the Fee Clause as authorizing the Fee Award. While the Fee Award should be reversed because West should not have prevailed on the merits in the first place, the Court should reverse the Fee Award regardless of how it adjudicates the merits because it is erroneous under the plain language of the Operating Agreement.

CONCLUSION

For the foregoing reasons, the Court should reverse the judgment and the Fee Award.

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