EFiled: Jul 10 2025 03:42PM EDT
Filing ID 76624072
Case Number 199,2025

IN THE SUPREME COURT OF THE STATE OF DELAWARE

TWO RIVERS FARM, LLC, Defendant Below Appellant, v. MELISSA GARLINGTON, Plaintiff Below Appellee.	No. 199, 2025 On Appeal from the Court of Chancery of the State of Delaware C.A. No. 2024-0917-BWD

APPELLANT'S CORRECTED OPENING BRIEF ON APPEAL

Of Counsel:

William J. Akins
(admitted pro hac vice)
PIERSON FERDINAND LLP
2021 Guadalupe Street, Suite 260
Austin, Texas 78705
Phone: (214) 924-9504

PIERSON FERDINAND LLP
Carl D. Neff (No. 4895)
Maura L. Burke (No. 5313)
CSC Station
112 S. French Street
Wilmington, Delaware 19801
Tel: (302) 482-4244

Attorneys for Appellant,
Two Rivers Farm, LLC

Dated: July 10, 2025

TABLE OF CONTENTS

Page(s)

TABLE OF AUTHORITIES

Cases **Page(s)**

Other Authorities

NATURE OF PROCEEDINGS

This appeal arises from the Court of Chancery's Order and Judgment dated April 7, 2025, which required Appellant, Two Rivers Farm, LLC ("Appellant" or the "Company"), to produce an unredacted copy of its member list to Appellee, Melissa Garlington ("Appellee"), subject to a confidentiality agreement, in a books and records action under 6 *Del. C.* § 18-305. After Appellant failed to timely respond to the Complaint while its corporate status was administratively forfeited, the trial court entered a default judgment ordering production of all requested documents without confidentiality protection. Appellant subsequently appeared through counsel with its entity status reinstated and moved to set aside the default judgment, arguing both procedural defects and substantive defenses, including that Appellee lacked a proper purpose for seeking the member list.

The trial court partially set aside the default judgment under Court of Chancery Rule 60(b)(6), but only to address confidentiality protections for member contact information. Critically, the trial court explicitly refused to permit Appellant to litigate the merits of whether Appellee stated a proper purpose under Section 18-305, despite this being a statutory prerequisite for member inspection rights. The trial court also denied all discovery, preventing Appellant from developing any evidence to support its improper purpose defense.

This appeal presents two fundamental questions about the scope of relief available when setting aside default judgments in statutory inspection actions. *First*, whether a trial court may condition the partial setting aside of a default judgment on a defendant's waiver of meritorious statutory defenses, contrary to Delaware's strong policy favoring resolution of cases on their merits. *Second*, whether due process permits a court to foreclose discovery necessary to develop statutory defenses while simultaneously faulting the defendant for failing to meet its burden of proof.

The trial court's approach effectively gutted Appellant's statutory rights under Section 18-305, which requires a proper purpose as a prerequisite to inspection. The evidence shows Appellee is acting as a proxy for Galtere, Inc., her former employer who lost litigation against the Company's manager and seeks to use the member list to orchestrate management changes for Galtere's financial benefit—precisely the type of improper purpose Delaware law prohibits. By preventing Appellant from litigating this defense while denying the discovery necessary to prove it, the trial court committed reversible error. Because the trial court abused its discretion in preventing the Company from raising a meritorious defense and further abused its discretion in foreclosing discovery on that defense, the Company timely filed this appeal.

SUMMARY OF ARGUMENT

1. The trial court abused its discretion in preventing Appellant from litigating a meritorious based argument when setting aside the default judgment entered against the Company under Rule 60(b)(6). Section I, *infra*.

2. The trial court abused its discretion in preventing the Company from taking any discovery after the default judgment was set aside under Rule 60(b0(6). Section II, *infra*.

STATEMENT OF FACTS

A. Parties

1. *Appellee Melissa Garlington*

Appellee is a minority investor in the Company. A0023. She is a former employee of a small investment advisory firm, Galtere, Inc. ("Galtere"). A0090, A1314, A1316. In June 2023, Galtere sued the Company's manager Harvest Capital Management, whose principal is Scott Oakes ("Manager"). A1343—A1349. While Galtere's lawsuit against the Manager was ongoing, Appellee began making serial demands for wide swaths of books and records from the Company.

On January 11, 2024, Plaintiff demanded a list of the Company's members ("Member List"), with the stated aim of gaining enough support to oust the Manager:

- To independently discuss with other Members their experiences in receiving information in accordance with the OA and whether communication was timely; whether they have been kept apprised of offers to purchase Two Rivers Farm, LLC ("Company"); whether they've been asked if they'd like to sell the Company; to determine their interest in having a Member meeting as there haven't been any to my knowledge in over 10 years and you have indicated no one else is interested in having such a meeting; to discuss - in light of your potentially divided interests in managing the Company; your unwillingness to provide all Members with requested let alone required documents; and continued failure to adhere to basic requirements of the OA - whether Harvest Capital Asset Management, LLC is the right fit for managing and/or pursuing a sale of the Company.

A0086, A1317.

Also on January 11, 2024, Appellee and her associate (who is not a member of the Company) entered the office building where Manager Scott Oakes rents office space. A1339. Mr. Oakes was not in the office that morning. A1339. Appellee had

not made an appointment. A1340. Mr. Oakes was unavailable. A1340. Plaintiff and her associate waited until the receptionist stepped away, then went into the office area, to Mr. Oakes's office, pushed open the door, entered and began taking photographs of any papers on Mr. Oakes's desk. A1340. Another individual asked them to leave and when they refused, he put himself between them and the desk. A1340. Only then did they relent and were escorted out to the parking lot. A1340. Appellee's unauthorized intrusion exposed what she had hoped to be the Company's information to her associate who was not a member. A1340.

In her March 11, 2024 demand, Plaintiff added new purposes for demanding the Member List:

1. To determine from other Members whether your new policy is universally applied to all Members with respect to transparency of management fees, etc. and limiting information to that which is only covered by the Operating Agreement.

2. To reach out to other Members to discuss your effectiveness as Manager for the following additional reasons:

    a. Your admission that you have not complied with the minimal requirements of the Operating Agreement despite taking a Management Fee.

    b. The inaccurate information contained within the documents you provide and your inability as Manager to ensure accuracy of the information provided to Members.

A0091, A1318. Her purposes were not aimed at her interests as a member, but rather at the efficacy of the Company's management – an admitted target of Galtere's litigation.

Appellee later added even more purported purposes for demanding the Member List. In her June 5, 2024 letter, she added these purposes:

- To determine the accuracy of your record keeping and the proper reflection of my ownership interests;
- To verify the accuracy of legal entities associated with my investment and their proper recitation in legal audits, documents, etc.[3]; and
- To determine whether units were transferred to any individual and/or entity not previously a Member.

A0094, A1319. Appellee also demanded a meeting of the Members. A0093, A1319.

The Company's Manager responded to Appellee's demands and produced books and records. In particular, by email on September 13, 2023, the Company's legal counsel responded to Appellee's prior email demand for documents. A1351—A1352. Notably, Appellee had not been pursuing her demands separate and apart from Galtere and its ongoing litigation against the Company's Manager. Galtere was in on it. Appellee copied her former colleagues at Galtere in her email demands to the Company. She copied:

'Renee Haugerud' <renee.h@galtere.com>

'Jennifer Provenzano' <Jennifer.P@galtere.com>

'Susan Haugerud' <skhaugerud@gmail.com> (personal email)

A1319, A1351. After all, Appellee had expressly credited Galtere with her investment in the Company. A0090, A1316, A1330.

The Company's legal counsel sent an omnibus detailed response by letter on January 25, 2024, and provided over 600 pages of documents. A1356 – A1958. The Manager, acting on behalf of the Company, advised that it was "exercising its rights to restrict access to the Member list due to its reasonable and good faith belief that

the intention for requesting such information is to damage the limited liability company and to otherwise use and provide such information to other members for the purposes of furthering open litigation matters and to improperly force a sale transaction." A1356. "[E]videnced by your prior acknowledged affiliation with such other member [Galtere] as well as your voluntary, repeated copying of such other member on your email correspondence regarding matters you claim are exclusive of such other member." A1356. Galtere admitted that Plaintiff was affiliated with them. A1356 – A1357.

2. *The Company*

The Company was formed to invest in Fazenda Dois Rios, Ltda., a limited liability company organized under the laws of Brazil to purchase, develop, and operate a farm in Brazil. A1344.

The Company operates under the Amended and Restated Operating Agreement of Two Rivers Farm, LLC, dated October 13, 2008. A0035 – A0073. Section 7.1 of the Operating Agreement requires that the Company maintain a "current list of the full name and last known business or residence address of each Member and Assignee set forth in alphabetical order, together with the Capital Contributions, Capital Account and Units of each Member and Assignee[.]" A0062. A member can request that Member List under Section 7.2 but, in doing so, must adhere to the restrictions of that section. A0062.

Section 7.2 makes a request "expressly subject to compliance by such Member with the safety, security and confidentiality procedures and guidelines of the Company, as such procedures and guidelines may be established from time to time." A0062. The Operating Agreement thus gives the Company authority to establish the confidentiality procedures and guidelines for disclosure of the Member List. Moreover, and consistent with 6 *Del. C.* § 18-305(a), a Member's request must be made "for purposes reasonably related to the interest of that Person as a Member[.]" A0062.

3. *Galtere, Inc.*

In or around 2008, Appellee's former employer Galtere, through wholly owned affiliate Galtere Global Farmland Fund, LLC, invested approximately $15,000,000 in the Company in the form of convertible debt. Galtere later entered into a separate transaction with the Company and then sued the Company's Manager for more than $800,000 with respect to that transaction.[1] A1343 – A1349.

According to the complaint in that case, Galtere – using its own words – demanded to be paid $800,000+ "before any distributions" were made to the Company's members "and before any Management Fees were taken by Harvest

[1] *Galtere, Inc. v. Harvest Capital Asset Management, LLC, et al.*, No. 4:23-cv-00196-SMR-HCA (S.D. Iowa 2024).

Capital." A1343. By the time that Appellee began making her demands for books and records, Galtere had been deep in litigation with the Company's Manager.

Parallel with its litigation, Galtere itself made its own demand to the Company. Galtere sent a letter, dated April 12, 2024, to the Company in which Galtere insinuated that it was building a case against the Company's management. Like Appellee, Galtere also demanded the Member List:

> In accordance with Section 18-305(c) of the Delaware code we are also requesting a copy of the current list of names and mailing addresses of each member to seek and share input regarding TRF operations and shareholder value. Given this is a list that can easily be sent in pdf format via email, please send this list urgently to the following email address jennifer.p@galtere.com . Per subsection (f) you have 5 business days to respond to this request for the member names and addresses.

A0097. In that same letter, Galtere threatened that it would sue the Company's Manager for "breach of your fiduciary duty to the [Company] members" and to "hold you [Scott Oakes, Company manager] personally responsible for all resulting monetary and nonmonetary damages incurred by such breach." A0096.

The trial court granted two motions for summary judgment against Galtere and in favor of the Company's Manager, dismissing all of Galtere's claims. *See Galtere, Inc. v. Harvest Cap. Asset Mgmt., LLC Ill.*, 2024 WL 5269201 (S.D. Iowa Oct. 4, 2024); *Galtere, Inc. v. Harvest Cap. Asset Mgmt., LLC Ill.*, 2024 U.S. Dist. LEXIS 235479 (S.D. Iowa, Nov. 21, 2024). Galtere has appealed those rulings. *See Galtere, Inc. vs. Harvest Capital Asset Mgmt.*, No. 24-3572 (8th Cir. 2024).

B. Books and Records Action and Default Judgment

While Galtere was awaiting a ruling on summary judgment motions in federal court, on September 3, 2024, Appellee filed this action seeking to inspect certain books and records of Appellant pursuant to 6 *Del. C.* § 18-305. A0023 – A0033.

Unbeknownst to Appellant at the time, its corporate status had been administratively forfeited before it was sued. Appellant did not timely respond to the Complaint, but Mr. Oakes nevertheless communicated with the trial court about Appellee's lawsuit. The trial court gave Appellant, through Mr. Oakes, additional time to respond to the Complaint. When Appellant did not timely file an answer, the trial court entered a default judgment. A0236 – A0237.

The trial court signed the default judgment in the form drafted by Appellee's counsel. It ordered Appellant to produce to Appellee all documents sought in the Complaint. A0236 – A0237. It did not condition such production on entry of a confidentiality order to protect the confidentiality of the members' information in that list. A0236 – A0237. Appellant subsequently appeared through counsel, raised arguments about service of process and the propriety of the default judgment, and moved to set aside the default judgment. A0260—A0282.

C. Partial Set Aside of Default Judgment

Appellant, with its entity status reinstated, participated in the case through counsel and produced (or re-produced) all of the requested books and records in existence except for one document: an unredacted copy of the Member List. As the trial court noted, Appellant's production "had mooted all but one request" – that being for the Member List. A2091. Appellant agreed to produce a redacted member list, redacting the members' contact information. Appellee demanded an unredacted member list, so that she could contact every member and air her complaints about the Company's Manager. Appellant argued that would work a manifest injustice because the member "list is subject to confidentiality and privacy expectations of others over whom Defendant has no control but for whom Defendant is bound to maintain privacy." A0261. The reason that the Company had that concern was specifically because of Appellee's association with Galtere, and her (and Galtere's) consistent threats to remove the Manager, which were made for the improper purpose of enabling Galtere to pay itself substantial sums from the Company in an effort to recoup its investment losses. A1340. Over Appellee's opposition, the trial court determined that the default judgment was valid but ruled that it would be reopened in a limited respect, under Court of Chancery Rule 60(b)(6), solely to address confidentiality issues regarding the contact information in the Member List. A1228 – A1230.

D. Appellant Sent a Case Management Schedule and Served Discovery Requests

On February 4, 2025, Appellant filed an answer and pleaded the statutory defense that Appellee was not entitled to receive the Member List because she was seeking it for an improper purpose. A1248. ("Plaintiff does not have a proper purpose for demanding to inspect Defendant's member list."). Appellant then sent to Appellee a proposed Stipulation and [Proposed] Order Governing Case Schedule. That proposal suggested reasonably prompt deadlines for written discovery and depositions, dates for submission of pretrial briefs, and anticipated the trial court's entry of a trial date.

On February 6, 2025, Appellant served one set of twelve requests for production (A1252 – A1262) and one set of sixteen interrogatories on Appellee. A1263 – A1269. That very same day, Appellee refused to answer the discovery requests, refused to agree to the case schedule, refused to agree to a deposition of Appellee, and instead sent a letter to the trial court asking for clarification of its ruling. A1270—A1289. Defendant filed its response on February 7, 2025. A1290—A1300. The trial court then held a hearing on March 6, 2025.

E. The Trial Court Denied Discovery, Ordered Production of the Member List, and Invited Supplemental Briefing on Confidentiality Issues

At the March 6, 2025 hearing, the trial court ruled that there would be no discovery, that the Member List was ordered to be produced, and that the parties were to provide supplemental briefing on the confidentiality issues directed at whether the Member List should be produced in redacted or unredacted form. A1308. The parties submitted supplemental briefing addressing confidentiality of the Member List and the propriety of Appellee's purpose in seeking the list. *See* Defendant's Brief in Support of Protection of its Members and Member List (A1310-A1959); Plaintiff's Answering Brief in Support of Production of Members List (A1960-A2061); and Defendant's Reply Brief in Support of Protection of its Members and Members List (A2067-A2086).

In Appellee's supplemental brief, Garlington did not dispute that she seeks to cause discord, undermine the Company's management, and assist her former employer, Galtere, in a campaign against the Company and its Manager. A2072—A2075. Appellee failed to meaningfully rebut the Company's factual allegations regarding her improper conduct, including her unauthorized office intrusion and having a non-member take photographs of confidential materials, her admitted coordination with Galtere, and the evidence that her purpose is to sow discord among

members at a critical time in the Company's business development to further the interests of Galtere. A2072—A2075

For its part, Appellant acknowledged to the trial court that a Member List is typically required to be made available for inspection when a member states a proper purpose. However, this case presents a situation where reasonable protections against misuse should be enforced. Appellee's true (and factually undisputed) purpose is to assist Galtere in gaining control of management so that Galtere can profit therefrom, having lost in litigation. This purpose is not only improper, but directly contrary to the Company's best interests.

Section 18-305(c) of the Delaware Limited Liability Company Act expressly permits a manager to withhold information when it would not be in the best interest of the company. And Section 7.2 of the Company's Operating Agreement authorizes management to establish confidentiality procedures concerning its books and records. A0062. The Company exercised its statutory and contractual rights in good faith and for valid business purposes, including preventing disruption to the Company while it attempts to negotiate a substantial sale of the Brazilian farm. A1341.

F. Trial Court's Ruling

On April 7, 2025, after supplemental briefing from both parties, the trial court issued a Letter Opinion ordering the Company to produce an unredacted copy of its member list to Appellee, subject to the execution of Appellee's form of purported confidentiality agreement.[2] A2087—A2099. The Company timely filed this appeal. In addition, the Company moved to stay pending appeal (A2100-A2114), which was unopposed and granted by the Court. A2115-A2116.

[2] *See* Letter Opinion dated April 7, 2025, attached hereto as Exhibit A.

ARGUMENT

I. The Trial Court Abused its Discretion by Preventing Appellant from Litigating a Meritorious Defense.

A. Question Presented

The trial court abused its discretion in preventing Appellant from litigating a meritorious statutory defense when partially setting aside the default judgment entered against the Company under Rule 60(b)(6). This issue was preserved at A1322-A1333 and A2075-A2078.

B. Scope of Review

A trial court's decision to grant or deny a motion to set aside a default judgment pursuant to Rule 60(b)(6) is reviewed for abuse of discretion. *Battaglia v. Wilmington Sav. Fund Soc*., 379 A.2d 1132, 1135 (Del. 1977).

C. Merits of the Argument

1. The Trial Court Improperly Precluded the Company from Asserting a Meritorious Statutory Defense.

The Company's defense that Appellee lacked a proper purpose is a meritorious defense under 6 *Del. C.* § 18-305, which makes a proper purpose a statutory prerequisite for a member's right to inspect company records. The trial court, however, explicitly "did not invite the parties to relitigate the propriety of Plaintiff's purpose[.]" A2095. By preventing the Company from challenging Appellee's purpose while partially setting aside the default judgment, the trial court

effectively required the Company to forego a statutorily protected, meritorious defense.

While courts have discretion to impose reasonable conditions when setting aside default judgments, the trial court abused its discretion in fashioning a harsh condition that prohibited Appellant from raising a statutory defense.

1. *Precluding Meritorious Defense was an Abuse of Discretion*

a. Cases Should be Decided on Their Merits

Delaware public policy favors deciding cases on the merits, leading to the inference that any doubt in whether a default should be set aside should be resolved in favor of the petitioner. *Dishmon v. Fucci*, 32 A.3d 338, 346 (Del. 2011). "Rule 60(b) should be construed liberally to give effect to that underlying policy." *Rivest v. Hauppauge Dig.*, No. 2019-0848-PWG, 2020 WL 4434842, 2020 Del. Ch. LEXIS 258, at *4 (Del. Ch. 2020). Aligned with that policy, courts consider whether a defaulted defendant "has a meritorious defense" to the claims against it. *Apartment Cmtys. Corp. v. Martinelli*, 859 A.2d 67, 69-70 (Del. 2004). A meritorious defense is one "that would allow a different outcome to the litigation if the matter was heard on its merits[.]" *Verizon Del. v. Baldwin Line Constr. Co.*, No. 02C-04-212-JRS, 2004 Del. Super. LEXIS 124, 2004 Del. Super. LEXIS 124, at *4 (Super. Ct. 2004). "To assert a meritorious defense, the defendant need only show that there is a

possibility of a different result." *Rivest*, 2020 WL 4434842, 2020 Del. Ch. LEXIS 258, at *5.

It is contrary to the policy of resolving cases on their merits to set aside a default judgment on the condition that the defendant waive an affirmative defense. Setting aside a default judgment "only on the condition that defendant waives its affirmative defenses—no matter how meritorious those defenses may be—directly undermines the policy in favor of resolution on the merits." *Dao v. Liberty Life Assur. Co.*, 2015 U.S. Dist. LEXIS 12793, *12, 2015 WL 457814 (N.D. Cal. Feb. 3, 2015) ("Accordingly, the Court declines to […] deprive defendant of its affirmative defenses"). As set forth in Corpus Juris Secundum, a court "in its discretion, may make it a condition that the defendant forbear to set up some particular defense that is considered unconscionable or purely technical." 49 C.J.S. Judgments § 604.However, the same authority states that "[i]t is an abuse of discretion … to require the defendant to waive a meritorious defense." *Id.* (collecting cases). This principle is firmly established across multiple jurisdictions.

In *Borden v. Briggs*, 49 R.I. 207, 142 A. 144 (1928), the Supreme Court of Rhode Island held that requiring a party to waive a meritorious defense would constitute an abuse of discretion, noting that "the weight of authority is against the imposition of such a condition, as a statute of limitations is generally considered a meritorious defense." *Id*. at 145. Similarly, in *Mitchell v. Campbell*, 13 P. 190, 192

(Or. 1887), the Supreme Court of Oregon found it was error to require, as a condition to set aside a default judgment, that defendant waive meritorious defenses, stating: "The machinery of the court cannot be used as a means to compel a party to surrender either a meritorious cause of action or defense. Courts were not instituted, nor are they conducted for that purpose."

Delaware law provides little guidance on conditions a court may impose when lifting a default judgment. In *Hirschman v. Homeopathic Hospital of Delaware*, Del. Super., C.A. No. 1684, 1960, and *Williams v. Delcollo Elec., Inc.*, 576 A.2d 683 (Del. Super. 1989), the courts imposed conditions relating to judgment timing, costs, and discovery schedules. Significantly, after a diligent review of Delaware case law, Appellant has not located any Delaware decision where the setting aside of a default judgment was conditioned upon defendant not litigating a merits-based argument.

Here, Appellant's affirmative defense that Appellee lacks a proper purpose for inspecting the member list is unquestionably a meritorious defense under 6 *Del. C.* § 18-305, which makes a proper purpose a statutory prerequisite for a member's right to inspect company records.

b. Propriety of Purpose

Section 18-305(a) enumerates certain categories of information subject to member inspection in the absence of any limitations in an applicable LLC agreement. "The rights of a member or manager to obtain information as provided

in [Section 18-305] may be restricted in an original limited liability company agreement." 6 *Del. C.* § 18-305(g). A member's or manager's right to receive such information is contingent on the member or manager stating, "a purpose reasonably related to the position." *Id.* § 18-305(b); *DFG Wine Co., LLC v. Eight Estates Wine Holdings, LLC*, 2011 WL 4056371, at *4 (Del. Ch. Aug. 31, 2011).

Inspection rights must be narrowly tailored to address specific needs pursuant to a primary proper purpose. *Chammas v. Navlink, Inc.*, 2016 WL 767714, at *8 (Del. Ch. Feb. 1, 2016) (citing *Louisiana Mun. Police Empls.' Ret. Sys. v. Countrywide Fin. Corp.*, 2007 WL 2896540, at *15 (Del. Ch. Oct. 2, 2007)). The plaintiff has the burden of proof to demonstrate that she is entitled to the inspection that she seeks. *Hoeller v. Tempur Sealy Int'l, Inc.*, 2019 WL 551318, at *1 (Del. Ch. Feb. 12, 2019). As the Court of Chancery has stated previously,

> A proper purpose for inspection is one that is reasonably related to the plaintiff's interest as a stockholder. Although the desire to investigate mismanagement or wrongdoing is a proper purpose, the stockholder must do more than state, in a conclusory manner, that this is his purpose. The stockholder must prove the purpose by a preponderance of the evidence. To meet this burden, the stockholder must present a credible basis from which the court can infer that the alleged wrongdoing occurred.

Id. at *7 (cleaned up). While the burden is low, the plaintiff still must demonstrate "some evidence" of wrongdoing. *Id.* A "stockholder must also state the reason(s) he

seeks to inspect the corporation's books and records, 'i.e., what [the plaintiff] will do with the information or an end to which that investigation will lead.'" *Id.*

Appellant never got a meaningful chance to apply the above framework to this case. The trial court made it clear that its decision to reopen the default judgment did not (and would not) include weighing the propriety of purpose. Instead, the trial court allowed Appellant to address only any confidentiality protections for the Company's members: "The Court did not invite the parties to relitigate the propriety of Plaintiff's purpose; it expected the parties to address potential harm to third parties in revealing confidential information without the protection of a confidentiality order." A2095. As a matter of clarification, the parties had never *litigated* the propriety of Appellee's purpose, so the trial court's characterization that Appellant wanted to "*relitigate*" is inaccurate.

In what appears to be an attempt to insulate its approach, the trial court undertook a shallow analysis of the Appellant's arguments, summarily concluding that they were irrelevant for decisional purposes but nevertheless failed "on the merits":

> Defendant now argues that (1) Plaintiff seeks the member list for an improper purpose, and (2) if Defendant is ordered to produce an unredacted copy of the member list, Plaintiff should be prohibited from using it. Even if those arguments were responsive to the narrow issue the parties were permitted to brief, they fail on the merits.

A2094. This is because the trial court had decided that Appellee "facially" stated a proper purpose: "Plaintiff has identified a facially proper purpose for seeking a member list." A2096. There are at least two errors in the trial court's insulative analysis. One, it only works if rejection of the meritorious defense is predetermined or inevitable. Two, it was superficial; it ignored the above case law for truly examining a proper purpose.

First, the trial court's approach only works if it intended to find a proper purpose at the outset or if a proper purpose would have been so overwhelmingly evident that the finding of an improper purpose would not have been possible. Otherwise, if an improper purpose was apparent, or perhaps even colorable, the trial court would have then had to confront the fact that it had previously denied any opportunity for Appellant to meaningfully develop that defense in the usual course of a books and records action. By ordering production of the Member List and denying discovery at the March 6, 2025 hearing, the result was predetermined by the time that the letter opinion was issued. *See* Exhibit A. The reality is that the trial court ruled that Appellant's improper-purpose defense was not before it. That the trial court then stated that it was assessing that defense "on the merits" was an attempt to insulate its decision.

Second, there is more to an improper-purpose analysis than superficially reviewing Appellee's stated purpose. A "[p]roper purpose has been construed to

mean that a shareholder's primary purpose must be proper, irrespective of whether any secondary purpose is proper." *Grimes v. DSC Communs. Corp.*, 724 A.2d 561, 565 (Del. Ch. 1998) ("[T]he primary purpose may not be adverse to the corporation's best interest.") (citation omitted).

The Company presented ample evidence that Appellee's sham purported purposes were not actually her primary motivations. Her primary purpose was improper because: (i) Appellee is demonstrably acting as a proxy for Galtere, which has a demonstrated history of animus toward the Company's Manager and a financial interest in replacing management; (ii) Appellee's actions may derail a substantial sale of the Brazilian farm that would benefit all members; and (iii) Appellee's true goal is not to protect her own interests as a member but to assist Galtere in taking control of management after Galtere lost its federal litigation seeking the same financial recovery. The trial court had before it evidence that Galtere was waging litigation against the Company's Manager as a proxy for Galtere, because it wanted to be paid over $800,000. A1316, A1339-A1349. The trial court also knew that Galtere lost that lawsuit. Appellee did not expressly deny that she was assisting Galtere's efforts to replace the Manager with Galtere. The timing of Appellee's escalating demands—coinciding precisely with Galtere's litigation losses—demonstrates the coordinated nature of this campaign. This was

no proper purpose – this was Galtere using Appellee as a proxy to circumvent a federal court's dismissal of its claims against the Manager.

This is precisely the type of purpose that Delaware law does not consider proper for obtaining sensitive member information. *See* Donald J. Wolfe, Jr. & Michael A. Pittenger, Corporate and Commercial Practice in the Delaware Court of Chancery § 9.07 (2025) ("It is equally clear that an application to obtain the stocklist in order to use it for personal profit … to harass the corporation or to gain leverage over the corporation or its affiliates in connection with a collateral transaction or dispute … constitute improper purposes for seeking inspection rights.") (collecting cases).

The trial court's acceptance of Appellee's pretextual stated purposes ignores Delaware's requirement to examine true motivations. And yet, the trial court accepted Appellee's arguments that her purpose was simply to "evaluat[e] and valu[e] her investment in the Company" or understand the Company's operations A1974. Those sham arguments fall apart under scrutiny. If Appellee wanted merely to value her investment, the extensive financial records that Appellant already gave her would be sufficient. *See* Donald J. Wolfe, Jr. & Michael A. Pittenger, Corporate and Commercial Practice in the Delaware Court of Chancery § 9.07 (2025) ("a stated purpose of seeking to value one's shares, standing alone, ordinarily will not support a demand for a stocklist") (citing *Bosse v. WorldWebDex Corp.*, 2009 WL 2425718,

at *1 (Del. Ch. July 30, 2009)); *see id.* ("Where the asserted purpose is to ascertain the value of the stockholder's shares, for example, the Court is far more likely to scrutinize the asserted need for such a valuation, and to consider carefully whether the specific books and records the plaintiff seeks to inspect are essential and sufficient to that need.").

Moreover, the Member List is clearly not needed to "evaluat[e] the effectiveness of management by the Manager" or to "determin[e] compliance by the Manager with the Company's Operating Agreement." A1981. Appellee's purported claims that management has "fail[ed] to call a member meeting", "fail[ed] to comply with Delaware's administrative requirements by maintaining a registered agent" (which was rectified), or to "maintain Company-level audited financial statements or any documentation of management fees" (A1981) has nothing to do with the Member List. The disconnect between Appellee's stated purposes and her actual need for member contact information reveals the pretextual nature of her demands. When looking behind the "facially" stated purposes, which the trial court did not do, it is clear that Appellant had a meritorious defense that it should have been permitted to develop. *See Holman v. Nw. Broad., L.P.*, 2007 WL 1074770, at *3 (Del. Ch. Mar. 29, 2007) (denying inspection to the extent the requested categories of books and records were unnecessary for plaintiff's stated purpose of valuation because plaintiff already possessed significant financial information received from the

corporation on a continuing basis pursuant to the settlement of a prior books and records action); *Beatrice Corwin Living Irrevocable Tr. v. Pfizer, Inc.*, 2016 WL 4548101 (Del. Super. Sept. 1, 2016) (denying inspection relating to deferred tax liability where stockholder could not show necessity of information for valuing public company). The trial court brushed aside any objection. The trial court essentially found that Appellee's purpose–to replace the Company's Manager with its litigation adversary who lost at trial and seeks another avenue to extract $800,000 from the Company–was proper merely because the general notion of replacing management can sometimes be proper.

The Operating Agreement provides additional protections that the trial court ignored. Section 7.2 of the Company's Operating Agreement makes member requests "expressly subject to compliance by such Member with the safety, security and confidentiality procedures and guidelines of the Company, as such procedures and guidelines may be established from time to time." A0062. This contractual provision, combined with Section 18-305(c)'s authorization to withhold information not in the company's best interest, provided Appellant with multiple layers of protection that the trial court's approach effectively nullified.

By preventing Appellant from challenging Appellee's purpose while partially setting aside the default judgment only on one limited ground that the trial court saw fit, the trial court effectively required Appellant to forego a statutorily protected

defense that had (and has) real merit under these circumstances. This restriction fundamentally altered Appellant's rights under Delaware law and constitutes an abuse of discretion that warrants reversal.

II. The Trial Court Erred by Denying Discovery Necessary to Support Appellant's Defenses.

A. Question Presented

The trial court abused its discretion in preventing the Company from taking any discovery after the default judgment was set aside under Rule 60(b0(6). This issue was preserved at A1290-A1300, A1331 and A2097.

B. Scope of Review

A trial court's decision to grant or deny a motion to set aside a default judgment pursuant to Rule 60(b)(6) is reviewed for abuse of discretion. *Battaglia v. Wilmington Sav. Fund Soc*., 379 A.2d 1132, 1135 (Del. 1977).

C. Merits of the Argument

1. The Company Was Denied Due Process and the Opportunity to Develop its Defense.

The trial court's approach violated basic due process by placing Appellant in an impossible position: bear the burden of proving improper purpose while being denied the discovery tools necessary to develop that proof. To be clear, the trial court could not decide Appellant's improper-purpose defense "on the merits" when it never gave Appellant an opportunity to develop that defense "on the merits."

Due process requires notice and an opportunity to be heard in a meaningful manner before a party is deprived of a substantive right. *See Mathews v. Eldridge*, 424 U.S. 319, 333 (1976). A meaningful opportunity to be heard necessarily includes

the right to present evidence supporting one's position. The trial court's denial of discovery in this action prevented the Company from developing and presenting evidence in support of its statutory defense, thereby implicating core due process principles.

Discovery is plainly appropriate and relevant in books and records actions to determine whether a proper purpose exists. *See Pershing Square, L.P. v. Ceridian Corp*., 923 A.2d 810, 819 (Del. Ch. 2007) ("This Court is required under 8 *Del. C.* § 220 to ensure that a stockholder's primary purpose in demanding access to corporate books or records is proper and to prevent abusive use of such demands. Where those elements are in doubt, the Court will use its statutory powers to deny relief."). Moreover, discovery of a plaintiff's prior misconduct is appropriate to establish a Section 18-305(c) defense. *See In re: I2D Partners, LLC Books and Records Demand Litigation,* 2024 WL 4952185, at *2 (Del. Ch. Dec. 2, 2024) (granting defendant's motion to compel discovery, finding that "discovery into Plaintiff's alleged abuse of confidential information may be relevant to Defendants' arguments under 6 *Del. C.* § 18-305(c)").

Here, despite preventing discovery, the trial court faulted Appellant for not proving its defense: "Defendant also argues that 'Plaintiff is nothing more than Galtere's proxy[]' and '[h]er demands are Galtere's demands[,]' *but has not met its*

burden to prove that is the case." A2097 (emphasis added). How could Appellant be expected to prove its burden while being denied discovery?

The trial court acknowledged that "Defendant says '[t]his is where discovery would have been illuminating' and [that Appellant] 'renews its bid to continue with the discovery that was already served and the depositions previously requested so that the question of a proper or improper purpose does not have to be guided solely by the limited documents already exchanged as demands and responses.'" A2097. That is true–discovery would have been illuminating. But the trial court concluded that discovery was not needed because there was no defense allowed to production of the Member List in the first place. The only question was whether it should be redacted or unredacted.[3]

When Appellant invoked its rights under Section 18-305(c) to prevent Appellees' *use* of the Member List (if in her possession), the trial court stated that Appellant "bears the burden to prove" that use would not be in the best interest of the Company. A2098. The trial court swiftly concluded, without citing any evidence, that Appellant's prohibition against use was "unwarranted." A2099.

[3] To be clear, no party asked the Court to modify the default judgment to provide for production of a redacted Member List. Appellant asked the trial court to set aside the default judgment, which the trial court said it did, in part. This is not a case in which the question is whether the trial court abused its discretion in failing to modify the default judgment to provide for production of a redacted Member List.

This can only mean that the trial court decided that Appellant failed to carry its burden to prove otherwise. But there was no opportunity for Appellant to undertake discovery in aid of carrying its burden —the trial court ensured that Appellant's hands were tied behind its back while simultaneously faulting it for not meeting its burden.

2. Appellant's Discovery Requests Were Directly Relevant to its Statutory Defenses.

The denied discovery was specifically tailored to develop evidence of improper purpose and Galtere coordination. Appellant intended to depose Appellee under oath, obtain her sworn interrogatory responses, and be aided by her document production. Instead, the trial court made sure that when Appellant bore the burden, it tied Appellant's hands tied behind its back while faulting it for not carrying its burden.

The Company's discovery requests were directly relevant both to whether Appellee stated a proper purpose, and whether keeping the member list confidential from Appellee was warranted under Section 18-305(c). The discovery would have revealed:

- The extent of coordination between Appellee and Galtere in pursuing these demands;
- Communications demonstrating Appellee's true motivations;

- Evidence of the timing correlation between Galtere's litigation losses and Appellee's escalating demands;
- Documentation of Appellee's unauthorized office intrusion and potential misuse of confidential information; and
- The scope of Galtere's involvement in directing Appellee's strategy.

A1252—A1269.

Without the benefit of discovery, Appellant argued that "Plaintiff is nothing more than Galtere's proxy[]" and "[h]er demands are Galtere's demands". A1331. While the circumstantial evidence strongly supports this theory, Appellant was denied the opportunity to obtain the direct evidence that would conclusively establish it. Without discovery, the Company could not adequately develop evidence regarding its allegation that Appellee was acting as a proxy for Galtere, which has a documented history of litigation against the Company's manager (A1343—A1349), or to establish Appellee's attempt to appropriate confidential Company records at the Manager's office without authorization. A1339—A1340.

Moreover, the denial of discovery particularly prejudiced Appellant's Section 18-305(c) defense. Section 18-305(c) permits withholding information when disclosure "would not be in the best interest of the limited liability company." Discovery into Appellee's coordination with Galtere, her past misconduct, and her

true intentions would have provided the evidentiary foundation necessary to invoke this statutory protection.

The trial court's denial of discovery represents a departure from Delaware's strong policy favoring full and fair litigation of disputes on their merits and raises substantial due process concerns regarding the Company's right to present its case in a meaningful manner. Delaware law protects both legitimate member access to information and company interests in confidentiality. By preventing companies from developing factual records to support their defenses, the trial court's approach inappropriately tips the scales in favor of plaintiffs, regardless of the merit of their purposes or the harm to legitimate business interests. These serious legal and constitutional questions merit reversal.

CONCLUSION

For the foregoing reasons, Appellant respectfully requests that this Honorable Court reverse the decision of the Court of Chancery and remand for further proceedings permitting Appellant to assert its statutory defenses and to conduct discovery necessary to develop those defenses.

Dated: July 10, 2025

Respectfully submitted,

/s/ Carl D. Neff

Carl D. Neff (No. 4895)
Maura L. Burke (No. 5313)
PIERSON FERDINAND LLP
CSC Station
112 S. French Street
Wilmington, Delaware 19801
Tel: (302) 482-4244

Attorneys for Appellant,
Two Rivers Farm, LLC

Of Counsel:

William J. Akins
(admitted *pro hac vice)*
PIERSON FERDINAND LLP
2021 Guadalupe Street, Suite 260
Austin, Texas 78705
Phone: (214) 924-9504