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Case Number 269,2025

IN THE SUPREME COURT OF THE STATE OF DELAWARE

DAVID A. HANDLER,	:	
	:	
Defendant-Counterclaim and Third-Party Plaintiff Below, Appellant,	:	Case No. 269, 2025
	:	
v.	:	Court Below: Court of Chancery of the State of Delaware
	:	
CENTERVIEW PARTNERS HOLDINGS LP,	:	C.A. No. 2022-0767-BWD
	:	
Plaintiff-Counterclaim Defendant Below, Appellee,	:	**PUBLIC VERSION FILED ON SEPTEMBER 18, 2025**
	:	
and	:	
	:	
CENTERVIEW PARTNERS ADVISORY HOLDINGS LLC, CENTERVIEW HOLDINGS GP LLC, ROBERT PRUZAN, And BLAIR EFFRON,	:	
	:	
Third-Party Defendants Below, Appellees.	:	

CORRECTED OPENING BRIEF ON APPEAL OF DEFENDANT AND COUNTERCLAIM PLAINTIFF AND THIRD-PARTY PLAINTIFF BELOW-APPELLANT DAVID HANDLER

Dated: September 3, 2025

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NATURE OF PROCEEDINGS

This is an appeal from an order of the Court of Chancery (per Vice Chancellor David) (the "Court Below") granting a motion to dismiss under Court of Chancery Rule 12(b)(6) on collateral estoppel grounds.[1] Appellant David Handler seeks reversal of that order, to the extent it dismissed his claims for breach of contract (Count III), breach of the implied covenant of good faith and fair dealing (Count IV), and unjust enrichment (Count V).[2] These claims were asserted as counterclaims and third-party claims in Handler's Second Amended Answer and Verified Counterclaims and Third-Party Claims ("SAC") against Centerview Partners Holdings LP, Centerview Partners Advisory Holdings LLC, Centerview Holdings GP LLC, Robert Pruzan, and Blair Effron (collectively, the "Centerview Defendants").

Handler brought the amended counterclaims/third-party claims to recover over [redacted] in compensation owed to him under a written employment agreement—referred to as the "2008 Letter"—with an affiliate of appellee Centerview Partners Holdings LP ("Topco"), an investment-banking firm, after Vice

[1] Attached here to as Exhibit A is the Memorandum Opinion Granting Motion to Dismiss Counterclaims, dated June 20, 2025 (the "Opinion Below"), at 18.

[2] Handler is not appealing the dismissal on collateral estoppel grounds of Counts I and II (Ex. A at 14-16), and that part of the Count V Unjust Enrichment counterclaim that alleged Centerview was unjustly enriched "under the promise and understanding that" Handler was a Topco partner. (*Id.*; *see* A00339, ¶157.)

Chancellor Glasscock, in a separate but related books-and-records action, found (a) while Handler was not a "partner" of Topco for purposes of the books-and-records statute, Handler was still "an employee with certain vested rights in Centerview," and (b) his 2008 Letter agreement "remained operative," such that the action from which this appeal is taken "should proceed" to determine Handler's rights as an employee.[3] On appeal, Handler challenges the Court Below's determination that Handler was collaterally estopped from pursuing these claims by the very decision where Vice Chancellor Glasscock said not only that the 2008 Letter "remained operative," but also that Handler's action to enforce it should proceed.

Handler brought his books-and-records action against Topco, in August 2022, under 17 *Del. C.* § 17-305. Around the same time, Topco filed this separate plenary action seeking declarations that Handler was an employee, not a Topco partner, did not own equity in Topco, and alternatively, any equity Handler owned was subject to repurchase. The plenary action also was originally assigned to Vice Chancellor Glasscock. Handler filed his original counterclaims and third-party claims in the plenary action, including claims for fraud, constructive fraud, breach of fiduciary duties, breach of contract, breach of the implied covenant of good faith and fair dealing, unjust enrichment, and constructive termination. Because they were later

[3] Memorandum Opinion dated April 24, 2024, *Handler v. Centerview Partners Holdings L.P.*, C.A. No. 2022-0672-SG (the "Standing Opinion") (A00032-65).

amended, these original counterclaims and third-party claims are not at issue in this appeal. But as relevant here, Handler's original counterclaims included a breach-of-contract claim under the 2008 Letter, pled in the alternative in the event he was found not to be a partner.

Vice Chancellor Glasscock stayed the plenary action to first determine, through the books-and-records action, the "narrow" question of whether Handler was a Topco partner who had standing to inspect its books and records. (A00033.) After a two-day trial, Vice Chancellor Glasscock issued his Standing Opinion, which analyzed whether an enforceable oral partnership agreement was created during a November 8, 2012, meeting in New York, as alleged by Handler, and concluded that "the objective contemporaneous evidence demonstrates that Handler and Centerview did not reach an agreement on the essential terms to create a partnership in Topco at the November 8th Meeting." (A00055.)

Vice Chancellor Glasscock included express directions in the Standing Opinion that, having determined that Handler was not a partner, "the parallel litigation, the Plenary Action should proceed" because Handler was still "an employee with certain vested rights in Centerview (to be determined in the Plenary Action)." (A00065.) Vice Chancellor Glasscock also expressly stated that the 2008 Letter "remained operative." (A00044.)

In response to this mandate, Handler filed the SAC in the plenary action, raising the counterclaims and third-party claims at issue on this appeal. Handler accepted the finding that no oral partnership agreement was reached and appropriately raised new claims in the SAC concerning his rights as an employee, not a partner, based on the 2008 Letter under which Handler was originally hired. As Handler alleged, the 2008 Letter had never been rescinded, revoked or replaced, and, in the Standing Opinion, Vice Chancellor Glasscock expressly stated that it "remained operative." (*Id.*)

After Vice Chancellor Glasscock's retirement, this case was transferred to Vice Chancellor David. The Centerview Defendants moved to dismiss Handler's SAC under Rule 12(b)(6) on a variety of grounds, including collateral estoppel, based on Vice Chancellor Glasscock's Standing Opinion.

In the June 20, 2025 Memorandum Opinion Granting Motion to Dismiss Counterclaims being appealed, the Court of Chancery dismissed Counts I through V of the SAC as barred by collateral estoppel. Despite Vice Chancellor Glasscock's statement—*in haec verba*—in the Standing Opinion that Handler's 2008 Letter "remained operative," the Court Below inferred that Vice Chancellor Glasscock's decision meant something other than what it said. Applying its own interpretation of Vice Chancellor Glasscock's opinion "[r]ead as a whole," the Court Below inferred that Vice Chancellor Glasscock determined that the parties modified the

2008 Letter such that the rights Handler was now seeking to enforce were no longer viable, and dismissed Handler's claims on that basis. The Court Below did not address that the document (referred to as the "Addendum") accomplishing any such modification (and relied on by Vice Chancellor Glasscock in the Standing Opinion) served only to increase Handler's compensation in certain respects and otherwise expressly stated that the 2008 Letter remained in full force and effect.

The Court Below also concluded, after only a cursory analysis, that every statement Vice Chancellor Glasscock made about the 2008 Letter and Handler's compensation arrangement was necessary and essential to the admittedly "narrow" question in the books-and-records action of whether Handler was a partner of Topco. Relying upon that broad conclusion, the Court Below determined that Handler's claims were barred by collateral estoppel, based on the Court Below's determination that Vice Chancellor Glasscock had decided that the parties modified the 2008 Letter to make Handler's compensation fully at the Centerview founders' discretion, rendering his claims under the 2008 Letter invalid.

The Court Below dismissed Handler's unjust enrichment claim, based on Vice Chancellor Glasscock's statement in the Standing Opinion that Centerview's founding partners "had discretion to implement compensation principles flexibly." (A00046.) The Court Below effectively transformed that unelaborated reference to "flexib[ility]" into a right for Centerview to pay Handler nothing at all for the work

he did in the first eight months of 2022 before his departure (during which he generated more than [redacted] in revenue for Centerview) and to seize for Centerview's own gain [redacted] in deferred compensation from Handler's own priority capital account.

The Court Below also dismissed *sua sponte* Count VI alleging constructive discharge for lack of subject matter jurisdiction, declining to exercise ancillary jurisdiction under the cleanup doctrine, with leave to transfer the claim to Superior Court. (Ex. A at 21-22.)

Handler timely filed a notice of appeal on June 25, 2025.

SUMMARY OF ARGUMENT

1. The Court Below erred by ignoring Vice Chancellor Glasscock's statements that this action should proceed to determine Handler's "vested rights" in Centerview as "an employee," and his findings in the Standing Opinion that the 2008 Letter "remained operative." (A00044, A00065.) The Court Below instead rewrote Vice Chancellor Glasscock's findings in the Standing Opinion and made its own improper contrary finding that when "[r]ead as a whole," the Standing Opinion really meant that the 2008 Letter did not "remain operative," directly contradicting what Vice Chancellor Glasscock found. (Ex. A at 18.) By ignoring and rewriting Vice Chancellor Glasscock's finding, the Court Below committed reversible error in failing to draw all reasonable inferences on a motion to dismiss in favor of Handler, the non-moving party.

2. The Court Below further committed reversible error by misapplying the principles of collateral estoppel, giving an erroneously broad interpretation to the requirement that, to have collateral estoppel effect, a prior finding must be "necessary and essential" to the judgment, rather than "dicta." The Court Below declared that nothing Vice Chancellor Glasscock wrote was "dicta" and treated without analysis every finding in the Standing Opinion, including the few compensation-related findings, as "necessary and essential" to the narrow holding that Handler was not a partner, *except* Vice Chancellor Glasscock's express finding

that the 2008 Letter "remained operative." This erroneous analysis led the Court Below to conclude that Handler's claims under the 2008 Letter were barred by collateral estoppel, with the Court Below declaring itself bound by Vice Chancellor Glasscock's supposed conclusion that the 2008 Letter had been modified to give Centerview's founders complete discretion over Handler's compensation. But Vice Chancellor Glasscock's few statements on Handler's compensation do not address in any way the narrow standing question of whether an oral agreement was reached because either (1) "the parties made a bargain with 'sufficiently definite' terms," or that (2) "the parties have manifested mutual assent to be bound by that bargain." (A00055.) Instead, these few findings on compensation on which the Court Below relies, as stated by Vice Chancellor Glasscock himself in the Standing Opinion, "merely indicate Handler accomplished his purpose at the meeting, to increase his compensation at Centerview, which explains his continuing presence at the firm." (A00064-65.) As such, they are "dicta," that under collateral estoppel law are not "necessary and essential" to the Standing Opinion's finding that Handler was not a Topco partner.

3. The Court Below further committed reversible error in dismissing Handler's unjust enrichment claim, which was based on (a) Centerview's failure to pay Handler any compensation at all for the first eight months of 2022 when he earned more than [redacted] for Centerview, and (b) Centerview's seizure of the

[redacted] in Handler's priority capital account at his departure. In dismissing those claims, the Court Below transformed Vice Chancellor Glasscock's finding that "[t]he Founders had discretion to implement compensation principles flexibly," into a right for Centerview to pay Handler *nothing* in 2022 for substantial services rendered, and to seize [redacted] of Handler's deferred monies being held in Handler's priority capital account on his departure from the firm. (A00046.) This also constituted reversible error.

STATEMENT OF FACTS

A. The Parties

Appellant Handler is a founding member of Centerview's Technology Practice, and the founder and former head of Centerview's Palo Alto office. (A00282, ¶16.) Handler resigned from Centerview on August 1, 2022.

Appellee Plaintiff/Counterclaim Defendant Centerview Partners Holdings LP ("Topco", or, together with its subsidiaries, "Centerview") is the highest entity in a multilayered entity structure that makes up an independent investment banking and advisory firm with offices in New York, London, San Francisco, Menlo Park, and Paris. (A00034-35.)

Appellee Third-Party Defendant Centerview Partners Advisory Holdings LLC is managed by Topco. In turn, Centerview Partners Advisory Holdings LLC owns 99% of Centerview Partners LLC, Centerview's investment banking operating company. (A00282, ¶19.)

Appellee Third-Party Defendant Centerview Holdings GP LLC is Topco's general partner. (*See* A00253.)

Appellee Individual Third-Party Defendants Robert Pruzan and Blair Effron are two of Centerview's founders, and are the only limited partners in Topco (collectively, the "Founders"). (A00036.)

B. Defendants Recruit Handler by Offering the 2008 Letter.

To induce Handler to leave his prominent leadership position with UBS AG and join the start-up Centerview, the Founders offered Handler a particularly lucrative package in the 2008 Letter. (A00285-86, ¶27.) The 2008 Letter set forth three distinct forms of compensation. (A00287, ¶30.) "The 2008 Letter . . . guaranteed that Handler . . . would earn 35% of revenues [he] generated up to $25 million, 40% of all revenues between $25 to $40 million, and 50% above the $40 million threshold." (A00037.) "In addition, the 2008 Letter enabled Handler . . . to participate in a fixed [minimum [redacted]] share of the Centerview Partners Profit Pool after 2010. The 2008 Letter also gave Handler . . . a collective 6.5% 'Equity Interest,' which constituted 'an interest in the terminal value of Centerview upon a liquidity event (sale, IPO etc [*sic*]).'" (A00037; A00287-89, ¶¶29-31.)

As Handler alleged, the 2008 Letter was never rescinded, revoked or replaced, and, as Vice Chancellor Glasscock found, "remained operative." (A00044; A00275-76, ¶4.)

C. Handler's Success and the November 8, 2012 New York Meeting.

Handler's Tech Team was immediately successful and by 2012 was exceeding the 2008 Letter's $40 million top revenue share level, which entitled Handler (and his then Tech Team partner David St. Jean) to 50% of those revenues, in addition to

the fixed minimum [redacted] of the firm's overall gross pre-tax earnings. (A00289-90, ¶32.)

After many failed efforts to negotiate a new partnership agreement, Handler proposed the Addendum to the 2008 Letter and the Founders Pruzan and Effron proposed a November 2012 Term Sheet, both of which were discussed at a November 8, 2012, meeting at the University Club in New York between Handler, St. Jean, and the Founders, Pruzan and Effron. (A00040; A00298-99, ¶¶49-51.) The Addendum (A00066-69), while not signed, proposed an increase in Handler's share of revenues his team generated to 60% and an ownership interest in a to-be-formed technology fund; it otherwise expressly provided that "[i]n all other respects, the [2008] Letter Agreement shall remain in full force and effect." (A00068.) In the Standing Opinion, Vice Chancellor Glasscock stated that, for some period "after[]" the November 2012 meeting, "Handler's compensation was consistent with the addendum to the 2008 Letter." (A00064.)

While Handler claimed that an oral partnership agreement was reached at the New York meeting, Vice Chancellor Glasscock concluded otherwise in the Standing Opinion. (A00065.)

D. Handler's Compensation from 2012 to 2022.

In the seven years from 2012 through 2018, Handler was underpaid based on the 2008 Letter by a total of approximately [redacted]. (A00308, ¶71.) The last

four years before Handler left Centerview in 2022 were by far his strongest and most profitable years. (A00309, ¶72.) Then, as he continued to build the Tech Practice in Palo Alto, where he had moved his family in 2016, Handler was underpaid by [redacted] in 2019, by [redacted] in 2021, and by [redacted] in 2022, based on what he was owed under the 2008 Letter. (A00310-312, ¶¶75-79.)

In the first seven months of 2022, before resigning on August 2, 2022, Handler continued to have a strong year, closing multiple deals and generating substantial revenues for Centerview, north of [redacted] in the first eight months. (A00312, ¶80.) If he had not been forced out of Centerview, Handler would have been paid approximately [redacted] for his work in 2022 under the compensation formula in the 2008 Letter, but Handler was not paid any compensation for his work in 2022 before or after his resignation. (*Id.*)

E. Handler's Deferred Compensation in Priority Capital Accounts.

In 2012, Centerview created "Priority Capital Accounts" for Handler, St. Jean, Pruzan, Effron, and two others. (A00312, ¶81.) The Priority Capital Accounts "were funded with deferred compensation" and "intended to ensure the firm had sufficient capital." (*Id.*) "Pruzan testified in the [Section 17-305] Books and Records Action that these funds represented compensation Handler earned in the year it was deferred into those accounts." (A00313, ¶82.) In other words, Handler effectively loaned Centerview compensation he already earned, for Centerview's

benefit. Vice Chancellor Glasscock confirmed in the Standing Opinion that Handler "received Priority Capital Amounts as part of his compensation from 2012-2015," but "did not receive Priority Capital Amounts after 2015." (A00046-47; A00312-13, ¶¶81-82.)

As of 2019, without informing Handler, Centerview paid all of the other five individuals with Priority Capital Accounts the money in their capital accounts in full—leaving Handler as the only remaining person at Centerview with a Priority Capital Account, which amounted to greater than [redacted] at the time of Handler's departure. (A00313, ¶¶83-84.) Centerview seized Handler's money in his Priority Capital Account on his departure, despite it being owned by him. (A00313, ¶82.)

F. The Efforts to Oust Handler.

Finally, Pruzan and Effron orchestrated a plan beginning in 2020 to drive Handler from Centerview so that they could recapture the economics promised to Handler for themselves, forcing Handler to resign in August 2022. (A00313-27, ¶¶85-106.) This conduct formed the basis for Handler's claim for constructive termination set forth in Count VI of his amended counterclaims.

G. The Proceedings Below

As noted, this appeal arises from the Court Below's June 20, 2025 Opinion Below granting the Centerview Defendants' Motion to Dismiss the Second

Amended Counterclaims in their entirety on collateral estoppel grounds based on the Standing Opinion. The relevant proceedings and opinions are summarized here.

i. The Standing Opinion Resolving the Books and Records Proceeding before Vice Chancellor Glasscock

In the opening paragraph of the Standing Opinion, Vice Chancellor Glasscock stated that "[t]he *narrow*, and rather unusual, subject of this Memorandum Opinion is whether Plaintiff, David Handler, was an employee of a Delaware L.P., or was in fact a partner in the entity that managed that L.P." (A00033 (emphasis added).) To reach his decision, Vice Chancellor Glasscock analyzed whether an enforceable oral partnership agreement was created during the November 8, 2012 meeting in NYC, as alleged by Handler, concluding that "Handler has failed to show, by a preponderance of the evidence, that the parties reached an agreement under which Handler (and his fellow employee non-party David St. Jean) became partners in Topco." (A00034.)

In addressing in the Standing Opinion the applicability of the 2008 Letter in the context of whether an oral partnership agreement had been reached, Vice Chancellor Glasscock found that following the November 8, 2012 meeting in New York, "the parties met again to discuss a partnership agreement in March 2013, but at the meeting's conclusion, the 2008 Letter, *i.e.* the employment agreement, remained operative." (A00044.) This finding on the continued applicability of the 2008 Letter following the November 8 meeting was directly supported by a footnote

reference to Joint Exhibit 88, which was a March 27, 2013, memo prepared by Kirkland & Ellis, as Centerview's counsel, that makes clear that all parties understood that the 2008 Letter "remained operative." (A00044, n.55, citing A00073.) Indeed, Vice Chancellor Glasscock further found that "when Handler addressed his compensation issues with the Founders, he asserted compensation rights provided by the 2008 Letter, instead of the purported oral partnership agreement." (A00064.)

Additionally, Vice Chancellor Glasscock included a few sentences in the Standing Opinion about Handler's compensation, which the Court Below would later heavily rely upon to find collateral estoppel preclusion. In rejecting Handler's argument in the books-and-records action that Handler was compensated as a partner, Vice Chancellor Glascock explained that:

> After the November 8th [2012] Meeting, Handler's compensation at the Company increased, but his compensation continued to be recorded through W-2 forms. From 2012 to 2018, Handler's compensation varied, as Handler's compensation remained subject to year-end negotiations with the Founders. The Founders had discretion to implement compensation principles flexibly, purportedly in a manner that benefited the firm and addressed issues for specific employees.

(A00046.)

Vice Chancellor Glasscock further explained that:

> Before the November 8th Meeting, . . . Handler and St. Jean sent the Founders an addendum to the 2008 Letter, which addressed their compensation. Afterwards, Handler's compensation was consistent

> with the addendum to the 2008 Letter. After the November 8th Meeting, when Handler addressed his compensation issues with the Founders, *he asserted compensation rights provided by the 2008 Letter*, instead of the purported oral partnership agreement. As such, I find that the record demonstrates that the changes in Handler's compensation, post the November 8th Meeting, merely indicate Handler accomplished his purpose at the meeting, to increase his compensation at Centerview, which explains his continuing presence at the firm.

(A00064-65 (emphasis added).)

Vice Chancellor Glasscock's statements described above underscore his finding that the 2008 Letter "remained operative," (A00044), which is further reinforced by the Addendum's express statement that the "[2008] Letter Agreement shall remain in full force and effect" (A00068).

The Standing Opinion also makes clear that Vice Chancellor Glasscock did not intend his decision to resolve all remaining claims in the plenary proceeding. For example, in the Standing Opinion, Vice Chancellor Glasscock wrote that "[a] companion substantive case, dependent in part upon the outcome here, will address Handler's rights after leaving the company." (A00033, n.1.) And in the Standing Opinion's concluding sentence of its analysis, Vice Chancellor Glasscock wrote: "I conclude that when Handler left his employment in 2022, he was an employee with certain vested rights in Centerview (to be determined in the Plenary action) but was not a Topco partner entitled to invoke 6 *Del. C.* § 17-305." (A00065.) Then, in the concluding paragraph, Vice Chancellor further stated, "[f]or the foregoing reasons,

I find that Plaintiff is not a partner of Topco and therefore not entitled to books and records under 6 *Del. C.* § 17-305. *The parallel litigation, the Plenary Action, should proceed*." (*Id.* (emphasis added).)

ii. Handler's Second Amended Counterclaims

Accepting Vice Chancellor Glasscock's decision that no oral partnership agreement was reached and Handler was therefore not a Topco partner, Handler amended his counterclaims to bring new claims in the plenary action to seek a determination of his rights as "an employee with certain vested rights in Centerview (to be determined in the Plenary action)." (A00065.) In the SAC, Handler asserted claims concerning his rights as an employee, not a partner, based on the 2008 Letter, which had never been rescinded, revoked or replaced, and "remained operative." (A00044.) In his original counterclaims, Handler included a breach-of-contract claim under the 2008 Letter, plead in the alternative in the event he was found not to have been a partner. (A00220-21, ¶¶166-72.)

As relevant here, the SAC includes claims for breach of contract based on the 2008 Letter (Count III), breach of the implied covenant of good faith and fair dealing (Count IV), and unjust enrichment (Count V). In his breach-of-contract claim, Handler alleged that Centerview Partners Advisory Holdings LLC breached the 2008 Letter from 2012 to 2021 by failing to pay Handler at least [redacted] that he was owed under its terms. (A00336-38, ¶¶140-49.) In the breach of the implied

covenant claim, Handler alleges that the Centerview Defendants breached their duties of good faith and fair dealing by not honoring the 2008 Letter and attempting to force Handler out of Centerview. (A00338-39, ¶153.) In the unjust-enrichment claim, as relevant here, Handler alleges that the Centerview Defendants "failed to compensate Handler at all for his work during the first seven months of 2022, despite Handler generating over [redacted] in revenue to Centerview during this period," (A00312, ¶80; A00340, ¶159); that the Centerview Defendants improperly seized "more than [redacted] in Handler's Priority Capital Account that was deferred compensation owed to Handler," (A00312-13, ¶¶81-84; A00340, ¶160); and that the Centerview Defendants "failed to issue the equity awarded to MMFin the 2008 Letter" (A00340, ¶161). None of the issues in these claims were previously raised or decided in the books-and-records action.

iii. The Opinion Below Granting Centerview's Motion to Dismiss the SAC in the Plenary Proceeding

In the Opinion Below, the trial court dismissed Counts I through V of the SAC based on collateral estoppel, holding "[t]hose counterclaims are premised on factual allegations that directly contradict Vice Chancellor Glasscock's factual findings in the books and records action." (Ex. A at 1.) In support, the Court Below selectively listed the following seven bullet points as the factual findings made in the Standing Opinion that supposedly supported dismissal on collateral estoppel grounds:

- "When Handler joined Centerview as an employee of CP LLC in June 2008, the terms of his employment were governed by the 2008 Letter." (Ex. A at 11, citing *Handler v. Centerview Partners Holdings L.P.*, 2024 WL 1775269, at *2 (Del. Ch. Apr. 24, 2024).)

- "In October 2012, 'in an offsite meeting,' Handler conveyed to Centerview that he was 'focused on changing [his] employment terms under the 2008 Letter.' He sent the Founders an 'addendum' to the 2008 Letter that would modify his compensation." (Ex. A at 11, citing *Handler*, 2024 WL 1775269, at *3.)

- "The parties then discussed Handler's compensation at the November 8 Meeting. The parties did not enter into an oral partnership agreement, as Handler argued. Instead, the Court found that 'Handler accomplished his purpose' to negotiate a modification to his compensation under the 2008 Letter." (Ex. A at 12, citing *Handler*, 2024 WL 1775269, at *13.)

- "After the parties agreed to modify Handler's compensation structure, his 'compensation varied, as Handler's compensation remained subject to year-end negotiations with the Founders,' and '[t]he Founders had discretion to implement compensation principles flexibly, purportedly in a manner that benefited the firm and addressed issues for specific employees.'" (Ex. A at 12, citing *Handler*, 2024 WL 1775269, at *6.)

- "Handler's Priority Capital Amounts were a part of his annual compensation discussions, which were subject to the Founder[s'] discretion, and not provided by the purported oral partnership agreement." (Ex. A at 12, citing *Handler*, 2024 WL 1775269, at *12.)

- "After the November 8 Meeting, Handler did not 'consider[] that [he] had entered an oral partnership agreement.' Instead, he admitted to third parties that he and the Founders were 'not done working through the details of' a partnership agreement." (Ex. A at 12, citing *Handler*, 2024 WL 1775269, at *10.)

- "Handler and the Founders continued to discuss a partnership agreement but never executed one. As of March 2013, the 2008

> Letter 'remained operative, as evidenced in a memorandum detailing the meeting.'" (Ex. A at 12, citing *Handler*, 2024 WL 1775269, at *5.) "But, again, Handler's compensation structure under the 2008 Letter had been modified." (Ex. A at 12.)

The Court Below also declared, without further analysis, that all of "Vice Chancellor Glasscock's detailed factual findings were not *dicta*; they were essential to – the very basis for – his ultimate holding on standing. Each of the factual findings summarized above was essential to Vice Chancellor Glasscock's determination that Handler and the Founders never entered into an oral partnership agreement, and Handler therefore was not a partner of Centerview with standing to inspect the partnership's books and records." (Ex. A at 13.)

With respect to the breach-of-contract, breach-of-the-implied-covenant, and unjust-enrichment claims based on the 2008 Letter, the Court Below found that each of these claims were based on the factual premise "that the 2008 Letter continued to govern after the November 8 Meeting," which, the Court Below concluded, "directly contradicts Vice Chancellor Glasscock's finding that the parties agreed to modify the 2008 Letter to change Handler's compensation structure," and "Handler's attempt to enforce express or implied compensation terms under the 2008 Letter contradicts the Court's ruling that the 2008 Letter was modified to make Handler's compensation discretionary." (Ex. A at 17-18.) But, as noted, the Court Below did not address the fact that the proposed Addendum served only to increase Handler's

compensation in certain respects and otherwise provided that the 2008 Letter remained in "full force and effect." (A00068.)

Having dismissed Handler's amended Counts I to V in their entirety, the Court Below *sua sponte* dismissed Count VI, alleging constructive discharge for lack of subject matter jurisdiction, and declined to exercise ancillary jurisdiction under the cleanup doctrine, with leave to transfer the claim to Superior Court. (Ex. A at 20-21.)

ARGUMENT

I. THE COURT OF CHANCERY ERRED BY IGNORING AND REWRITING VICE CHANCELLOR GLASSCOCK'S FINDINGS THAT THE PLENARY ACTION SHOULD PROCEED AND THAT THE 2008 LETTER "REMAINED OPERATIVE."

A. Question Presented

Whether the Court Below erred in dismissing, under Court of Chancery Rule 12(b)(6), Handler's claims for breach of contract, breach of the implied covenant, and unjust enrichment on collateral estoppel grounds, by ignoring Vice Chancellor Glasscock's statements that the "Plenary Action should proceed" to determine Handler's remaining "vested rights in Centerview" and by ignoring and rewriting Vice Chancellor Glasscock's finding that the 2008 Letter "remained operative," (A00044; A00065), thereby failing to draw all reasonable inferences in Handler's favor on a motion to dismiss.

This issue was raised and preserved below (A00996-01006) and considered by the Court of Chancery (Ex. A at 10-14, 17-20).

B. Scope of Review

This Court "review[s] *de novo* the dismissal by the Court of Chancery of [amended counterclaims] under Rule 12(b)(6).'" *City of Dearborn Police and Fire Revised Ret. Sys. v. Brookfield Asset Mgmt. Inc.*, 314 A.3d 1108, 1126 (Del. 2024) (quoting *Malpiede v. Townson*, 780 A.2d 1075, 1082 (Del. 2001)). This Court also

"review[s] a trial court's application of collateral estoppel *de novo*." *Rogers v. Morgan*, 208 A.3d 342, 346 (Del. 2019).

C. Merits of Argument

i. Applicable Law

"The pleading standards governing the motion to dismiss stage of a proceeding . . . are minimal." *Cent. Mortg. Co. v. Morgan Stanley Mortg. Cap. Hldgs. LLC*, 27 A.3d 531, 536 (Del. 2011) (citing *Savor, Inc. v. FMR Corp.*, 812 A.2d 894, 896 (Del. 2002)). A court's sole task on a motion to dismiss "is to test the sufficiency of a complaint, not to resolve disputed facts or decide the merits of the case." *Hall v. Holman*, 2006 WL 2587693, at *1 (D. Del. Sept. 8, 2006) (citing *Kost v. Kozakiewicz*, 1 F.3d 183 (3d Cir. 1993)). In accomplishing that task, Delaware courts are required to "draw all reasonable inferences in favor of the non-moving party." *Cent. Mortg. Co.*, 27 A.3d at 535 (citing *Savor*, 812 A.2d at 896–97); *see also Rammuno v. Cawley*, 705 A.2d 1029, 1036 (Del. 1998).

When ruling on a motion to dismiss, a court may not act as factfinder by weighing the strength of the parties' respective factual contentions. *See In re Riverstone National, Inc. Stockholder Litig.*, 2016 WL 4045411, at *12 (Del. Ch. July 28, 2016); *Hall*, 2006 WL 2587693, at *3 ("The court, however, does not weigh evidence to 'resolve disputed facts' at the motion to dismiss stage of a lawsuit.") (citations omitted). When a court is confronted with conflicting facts on a motion

to dismiss, it cannot credit evidence supporting the moving party's position over evidence supporting the nonmoving party's position. *See In re WeWork Litig.*, 2020 WL 7343021, at *11 (Del. Ch. Dec. 14, 2020). Similarly, when "competing inferences" may be drawn from the operative facts, the court must draw the inference that favors the non-moving party. *See, e.g.*, *IBEW Loc. Union 481 Defined Contribution Plan & Tr. ex rel. GoDaddy, Inc. v. Winborne*, 301 A.3d 596, 632 (Del. Ch. 2023) ("At the pleading stage, the court does not decide between competing inferences. The plaintiff receives the benefit of the inference that favors its case."); *Lebanon Cnty. Emps.' Ret. Fund v. Collis*, 287 A.3d 1160, 1181 (Del. Ch. 2022) ("If there are factual conflicts in the documents or the circumstances support competing interpretations, and if the plaintiffs made a well-pled factual allegation, then the court must credit the allegation.") (citing *Savor*, 812 A.2d at 896). Doing otherwise runs contrary to the "time-honored rules governing motions to dismiss under Rule 12(b)(6) by failing to draw every reasonable inference in favor of the complainant." *Rammuno*, 705 A.2d at 1036 (reversing grant of motion to dismiss).

Similar principles apply to assessing the collateral-estoppel effect of a judgment. As the Superior Court has noted, if an inference or conclusion sought to be drawn from a judgment "is the product of one of several possible constructions of the" ruling, then it "does not have collateral estoppel effect." *Brandywine 100*

Corp. v. New Castle Cnty., 1984 WL 484491, at *1 (Del. Super. Ct. Oct. 1, 1984) (denying collateral estoppel effect to jury's verdict on an issue where multiple inferences could be drawn from verdict); *see also Salt Pond Inv. Co. v. Wilgus*, 1987 WL 20183, at *3 (Del. Ch. Nov. 16, 1987) (no collateral estoppel where prior court ruling was "ambiguous" on the issue); *Employers' Liab. Assur. Corp. v. Madric*, 54 Del. 593, 183 A.2d 182 (Del. 1962) (noting, in the context of equitable estoppel, that "an estoppel may not rest upon an inference that is merely one of several possible inferences").

Applying these principles, it is clear that the Court Below erred when it chose an at-best plausible inference from arguably ambiguous language in the Standing Opinion and credited it over an explicit statement in that opinion that favored Handler as the non-moving party.

ii. Based on Vice Chancellor Glasscock's statement—*in haec verba*—that the 2008 Letter "Remained Operative," Handler's Claims Under That Agreement Must Proceed.

In addressing the applicability of the 2008 Letter in his Standing Opinion, Vice Chancellor Glasscock found that, following the November 8, 2012 meeting in New York, "the parties met again to discuss a partnership agreement in March 2013, but at the meeting's conclusion, the 2008 Letter, *i.e.* the employment agreement, "remained operative." (A00044.) In support of that conclusion, Vice Chancellor Glasscock cited Joint Exhibit 88, which was a March 27, 2013, memo prepared by

Kirkland & Ellis, Centerview's counsel. (A00044, n.55, citing A00073.) The March 27, 2013 memo summarizing negotiations between the Founders and Handler makes clear that all parties understood that the 2008 Letter still "remained operative" by stating that only if a final Topco Agreement was executed by Handler and St. Jean (which it is undisputed never occurred), "the existing compensation letters of David Handler and David St. Jean will be terminated." (*Id*.)

Instead of accepting Vice Chancellor Glasscock's facially clear findings on this issue, the Court Below ignored and rewrote them. The Court Below found that, despite Vice Chancellor Glasscock's plain statement that the 2008 Letter "remained operative" after the November 8 Meeting,

> Read as a whole, the Memorandum Opinion is clear that at the November 8 Meeting, the parties agreed to modify Handler's compensation structure under the 2008 Letter; thereafter, rather than form an oral partnership, the parties operated under the 2008 Letter *as modified* by Handler's new discretionary compensation arrangement. [citation omitted]. The Memorandum Opinion did not find that the original 2008 Letter governed Handler's compensation after November 8, 2012.

(Ex. A at 18.)

Moreover, the Opinion Below ignores Vice Chancellor Glasscock's finding that the 2008 Letter "remained operative" and that "Handler and St. Jean sent the Founders an addendum to the 2008 Letter, which addressed their compensation. Afterwards, Handler's compensation was consistent with the addendum to the 2008

Letter." (A00064-65; *see also id.*, at 3, 7 n.29, citing A00068.) As counsel to Handler argued before the Court Below, "I can't tell whether [Vice Chancellor Glasscock] concluded that somehow the addendum was agreed to. The addendum is very clear by its terms that it incorporates the 2008 [Letter], that it doesn't overrule it but, rather is an override on it . . . We don't know. We need to litigate these issues." (A01131 at 49:4-8, 49:17-18.) The Court Below simply ignored this potential ambiguity in Vice Chancellor Glasscock's findings on compensation, and instead affirmatively found, as a matter of law, that Vice Chancellor Glasscock had concluded that the 2008 Letter was modified to extinguish the claims Handler now asserted under it. That erroneous conclusion simply cannot be squared with the plain language of the very document—the proposed Addendum—that supposedly caused the modifications. As noted, the Addendum proposed increasing Handler's revenue share and giving him an interest in a new fund, while explicitly stating that "[i]n all other respects, the [2008] Letter Agreement shall remain in full force and effect." (A00068.) The Court Below's contrary conclusion in the face of Vice Chancellor Glasscock's statements and the Addendum's own plain language demonstrates that this is a classic case of a court failing to draw all reasonable inferences in Handler's favor on a motion to dismiss, requiring reversal. Even if the Court Below's reading of Vice Chancellor Glasscock's Standing Opinion were plausible, that would, at most, show that the Standing Opinion was "ambiguous and it therefore cannot

preclude" the Court Below, on collateral estoppel grounds, "from now considering the issue of" Handler's "rights" under the 2008 Letter. *Salt Pond Inv. Co.*, 1987 WL 20183, at *3 (noting that "collateral estoppel" requires "an earlier factual determination which must be unambiguously set forth" and denying collateral-estoppel effect where prior order was "ambiguous").

The Court Below's choice of one factual inference in favor of the moving party (Centerview) over another conflicting reasonable inference *based on the Standing Opinion's own words* is not appropriate at this stage, where the non-moving party "receives the benefit of the inference that favors its case." *IBEW*, 301 A.3d at 632; *see also In re WeWork Litig.*, 2020 WL 7343021, at *11 ("resolv[ing of] material factual disputes" and "weigh[ing of] evidence" not allowed on a motion to dismiss).

The Court Below also wrongly concluded that Handler's claims under the 2008 Letter "contradict[] Vice Chancellor Glasscock's finding that the parties agreed to modify the 2008 Letter to change Handler's compensation structure." (Ex. A at 17.) To the contrary, Handler's claims are fully consistent with Vice Chancellor Glasscock's statement that the 2008 Letter "remained operative," and with the plain language of the proposed Addendum. (A00044.) If anything, the Court Below appears to have been intent on penalizing Handler for pleading claims in the alternative—by claiming, in his original counterclaims, that he was a partner, and

alternatively, that if the court found he were not a partner, that he had claims under the 2008 Letter. (*See* A00220-21, ¶¶ 166-72.) But the Court of Chancery rules expressly permit pleading "alternatively," Ch. Ct. R. 8(d)(2), and Handler should not be punished for taking that approach. *See, e.g.*, *Garfield on behalf of ODP Corp. v. Allen*, 277 A.3d 296, 360 (Del. Ch. 2022) (refusing to dismiss claims pled alternatively).

Indeed, Vice Chancellor Glasscock also took pains to signal unambiguously that he did not intend for the Standing Opinion to resolve all issues in the dispute between Handler and the Centerview defendants, stating that the plenary action "should proceed" because Handler "was an employee with certain vested rights in Centerview (to be determined in the Plenary action)." (A00065.) If Vice Chancellor Glasscock intended the Standing Opinion to resolve all remaining claims in the dispute, apart from the "narrow" issue before him in the books and records proceeding of whether Handler was a Topco partner, he would have simply stated that there were no issues left to be decided in the plenary action, rather than so plainly and repeatedly stating the opposite.

This Court should reverse the Opinion Below and allow the plenary action to proceed to consider Handler's rights as an employee based on the 2008 Letter that "remained operative." (A00044.)

II. THE COURT BELOW MISAPPLIED COLLATERAL ESTOPPEL PRINCIPLES IN CONCLUDING THAT VICE CHANCELLOR GLASSCOCK'S STATEMENTS ON HANDLER'S COMPENSATION WERE NECESSARY AND ESSENTIAL TO THE STANDING OPINION'S CONCLUSION THAT HANDLER WAS NOT A TOPCO PARTNER.

A. Question Presented

Whether the Court Below erred in dismissing Handler's claims on collateral estoppel grounds by misapplying collateral estoppel principles requiring that, to be entitled to collateral estoppel effect, a finding must be necessary and essential to the judgment, where the Court Below failed to engage in the required analysis of whether any finding in the Standing Opinion concerning the 2008 Letter was "necessary and essential" to the narrow standing issue being decided and instead adopted an overbroad and unsupportable conclusion that nothing in Vice Chancellor Glasscock's Standing Opinion was "dicta."

This issue was raised and preserved below (A00996-01006) and considered by the Court Below (Ex. A at 10-14).

B. Scope of Review

This Court "review[s] *de novo* the dismissal by the Court of Chancery of [amended counterclaims] under Rule 12(b)(6).'" *City of Dearborn Police and Fire Revised Ret. Sys.*, 314 A.3d at 1126 (quoting *Malpiede*, 780 A.2d at 1082). This Court also "review[s] a trial court's application of collateral estoppel *de novo*." *Rogers*, 208 A.3d at 346.

C. Merits of Argument

i. Applicable Law

For collateral estoppel to apply, "the issue must have been actually raised, fully litigated, and identical to the issue concluded in the earlier action, the issue must have been material and relevant to the disposition of the prior action, and the determination of the issue in the prior action must have been *necessary and essential* to the resulting judgment." *Sprout v. Ellenburg Capital Corp.*, 1997 WL 716901, at *6 (Del. Super. Ct. Aug. 26, 1997) (emphasis added). "The test for applying collateral estoppel requires that (1) a question of fact essential to the judgment, (2) be litigated and (3) determined (4) by a valid and final judgment." *Smith v. Guest*, 16 A.3d 920, 934 n.83 (Del. 2011) (quoting *Messick v. Star Enter.,* 655 A.2d 1209, 1211 (Del. 1995)). Crucially, "the determination [must be] essential to the prior judgment." *Weber v. Weber*, 2015 WL 1811228, at *2 (Del. Ch. Apr. 20, 2015). "A determination ranks as necessary or essential only when the final outcome hinges on it." *Bobby v. Bies*, 556 U.S. 825, 835 (2009); *BuzzFeed Media Enters., Inc. v. Anderson*, 2024 WL 2187054, at *15 (Del. Ch. May 15, 2024) (same). "The requirement that an issue be essential to the resulting judgment is applied narrowly and only precludes those issues vital or crucial to the previous judgment without which the previous judgment would lack support." *BuzzFeed Media Enters*, 2024 WL 2187054, at *15 (cleaned up). "[I]n determining whether the issue

was essential to the judgment," courts "must look to whether the issue was critical to the judgment, or merely dicta." *Nat'l R.R. Passenger Corp. v. Pa. Pub. Util. Comm'n*, 288 F.3d 519, 527 (3d Cir. 2002). "Dicta" includes "judicial statements on issues that would have no effect on the outcome of [the] case." (Ex. A at 13, n.6, quoting *In re MFW S'holders Litig.*, 67 A.3d 496, 521 (Del. Ch. 2013).)

ii. The Court Below Misapplied Collateral Estoppel Principles in Taking an Insupportably Broad View of the "Necessary and Essential" Requirement; No Statement in the Standing Opinion Relating to Handler's Compensation Was Necessary or Essential to the Judgment.

The Court Below further committed reversible error by misunderstanding the concept of "dicta" as it applies in collateral estoppel analysis, declaring that nothing Vice Chancellor Glasscock wrote in his "detailed factual findings" was "dicta," and treating without any required analysis every finding in the Standing Opinion, including his scant findings on compensation, as "essential" to the narrow holding that Handler was not a partner, (Ex. A at 13), *except for* his finding that the 2008 Letter "remained operative" (A00044), which the Court Below ignored and rewrote. (*See* Part I, *supra,* pp. 26-30.)

The Court Below rejected Handler's argument that many of Vice Chancellor Glasscock's findings in the Standing Opinion were "dicta," which counsel to Handler explained meant "any statement made by the Court not necessary to its finding." (Ex. A at 13, n.5, quoting A01132.) Other than the conclusory statement

that everything Vice Chancellor Glasscock wrote was "essential to – the very basis for – his ultimate holding on standing," the Court Below made no attempt to explain how that was indeed the case. (Ex. A at 13.) Instead, as even a basic analysis of the facts, the relevant law, and the Standing Opinion makes clear, no statement that Vice Chancellor Glasscock made about Handler's compensation rights as an employee was necessary or essential to the judgment in the Standing Opinion that Handler was not a partner at Topco.

To reach its decision that Handler was not a partner, Vice Chancellor Glasscock analyzed whether an enforceable oral partnership agreement existed between Handler and Centerview. (*See* A00055-63.) Under Delaware law, an enforceable contract exists when "(1) the parties have made a bargain with sufficiently definite terms; and (2) the parties have manifested mutual assent to be bound by that bargain." (*Id.*, quoting *Sarissa Cap. Domestic Fund LP v. Innoviva, Inc.*, 2017 WL 6209597, at *21 (Del. Ch. Dec. 8, 2017)). "Mutual assent 'is to be determined objectively based upon the [][parties'] expressed words and deeds as manifested at the time rather than by their after-the-fact professed subjective intent[.]'" (Standing Opinion, at 23, quoting *Sarissa Cap. Domestic Fund LP.*, 2017 WL 6209597, at *21 (Del. Ch. Dec. 8, 2017) (quoting *Debbs v. Berman,* 1986 WL 1243, at *7 (Del. Ch. Jan. 29, 1986)).) Applying this standard, Vice Chancellor Glasscock determined that, though "there were several failed attempts between the

Founders and Handler to renegotiate the relationship created by 2008 Letter . . . into a partnership agreement" no agreement was reached. (A00038.)

In reaching his decision, Vice Chancellor Glasscock details negotiations between Handler and Centerview over the years, before concluding that "the evidence falls short of demonstrating an oral partnership agreement." (A00065.) Vice Chancellor Glasscock included limited observations concerning Handler's compensation, notably:

- "After the November 8th Meeting, Handler's compensation at the Company increased, but his compensation continued to be recorded through W-2 forms. From 2012 to 2018, Handler's compensation varied, as Handler's compensation remained subject to year-end negotiations with the Founders. The Founders had discretion to implement compensation principles flexibly, purportedly in a manner that benefited the firm and addressed issues for specific employees." (A00046.)

- "Before the November 8th Meeting, . . . Handler and St. Jean sent the Founders an addendum to the 2008 Letter, which addressed their compensation. Afterwards, Handler's compensation was consistent with the addendum to the 2008 Letter. After the November 8th Meeting, when Handler addressed his compensation issues with the Founders, *he asserted compensation rights provided by the 2008 Letter, instead of the purported oral partnership agreement*. As such, I find that the record demonstrates that the changes in Handler's compensation, post the November 8th Meeting, merely indicate Handler accomplished his purpose at the meeting, to increase his compensation at Centerview, which explains his continuing presence at the firm." (A00064-65 (emphasis added).)

The Court Below boiled these "factual findings" down to the following two bullet points, upon which the Court relied on in dismissing Counts III, IV and V:

- "The parties then discussed Handler's compensation at the November 8 Meeting. The parties did not enter into an oral partnership agreement, as Handler argued. Instead, the Court found that 'Handler accomplished his purpose' to negotiate a modification to his compensation under the 2008 Letter." (Ex. A at 12, quoting *Handler*, 2024 WL 1775269, at *13.)

- "After the parties agreed to modify Handler's compensation structure, his 'compensation varied, as Handler's compensation remained subject to year-end negotiations with the Founders,' and '[t]he Founders had discretion to implement compensation principles flexibly, purportedly in a manner that benefited the firm and addressed issues for specific employees.'" (*Id.*, quoting *Handler*, 2024 WL 1775269, at *6.)

Notably, the Court Below left out Vice Chancellor Glasscock's statement that "when Handler addressed his compensation issues with the Founders, he asserted compensation rights provided by the 2008 Letter" in the above truncated summary, before summarily concluding, "Vice Chancellor Glasscock's detailed findings were not *dicta*; they were essential to – the very basis for – his ultimate holding on standing. Each of the factual findings summarized above was essential to Vice Chancellor Glasscock's determination that Handler and the Founders never entered into an oral partnership agreement, and Handler therefore was not a partner of Centerview with standing to inspect the partnership's books and records." (A00064; Ex. A at 13.)

Moreover, none of the findings on Handler's compensation following the November 8 meeting upon which the Court Below relies were "essential to the judgment" of the Standing Opinion, because none of them address the standing

question of whether an enforceable contract existed to support Handler's partnership claim. That "[t]he Founders [had] discretion to implement compensation principles flexibly, purportedly in a manner that benefited the firm and addressed issues for specific employees," (A00046) does *not* address in any way the narrow standing question of either whether (1) "the parties have made a bargain with 'sufficiently definite' terms," or (2) "the parties have manifested mutual assent to be bound by that bargain." (A00055.) As such, they are "dicta," that under collateral estoppel law are not "necessary and essential" to the Standing Opinion's finding that Handler was not a Topco partner and therefore cannot support dismissal of counterclaims III (Breach of Contract), IV (Breach of Implied Covenant) and V (Unjust Enrichment) on collateral estoppel grounds. By contrast, the pages of factual findings in the Standing Opinion discussed by Vice Chancellor Glasscock (A00055-63) all directly address these contract formation issues making them "necessary and essential" in determining whether an enforceable contract was created, when these few sentences on compensation relied on by the Court Below simply do not.

Finally, Vice Chancellor Glasscock also made additional legal findings in the Standing Opinion further demonstrating that any findings he made on changes in Handler's compensation following the November 8 meeting could never be "necessary and essential" to the determination of whether Handler was a partner. In this regard, Vice Chancellor Glasscock ruled that receiving compensation or other

economic interests can never demonstrate, as a matter of law, that a partnership exists, absent evidence of control and ownership in the purported partnership. *Grunstein v. Silva*, 2014 WL 4473641, at *23 (Del. Ch. Sept. 5, 2014), *aff'd,* 113 A.3d 1080 (Del. 2015) (holding that a partnership did not exist where plaintiff did not have control and ownership in the purported partnership). Handler had argued that his "receipt of Topco Priority Capital Amounts and Priority Capital Accounts directly contradicts [Centerview's] assertion that he was not a partner of Topco" because they are "quintessential partnership interests 'tied directly to Topco's business fortunes'. . ." (A00062.) In rejecting this argument, Vice Chancellor Glasscock emphasized "simply receiving economic interests does not provide that a partnership exists," citing *Grunstein*, 2014 WL 4473641, at *23; *Grunstein v. Silva*, 2011 WL 378782, at *9 (Del. Ch. Jan. 31, 2011) (A partnership does not exist if parties have a common obligation to share losses as well as profits); 6 *Del. C.* § 15-502 (c)(3)(ii) (providing that an employee sharing profits does not create a presumption of partnership). Vice Chancellor Glasscock further stated "Handler did not share in losses with Centerview and did not have governance rights, indicating that a partnership did not exist." (A00062-63). Vice Chancellor Glasscock's findings, therefore, that Handler's compensation was "subject to the Founders' discretion" could never have been "necessary and essential" to the determination that Handler was not a partner because, as a matter of law, "simply receiving

economic interests does not provide that a partnership exists." (A00057 at n.148; A00062.) In short, any findings in the Standing Opinion on changes in Handler's compensation are legally irrelevant to the standing question of whether Handler was a partner under Vice Chancellor Glasscock's own legal analysis. (*Id.*)

The Court Below's summary conclusion, without any further analysis, that the few statements that Handler's compensation following the November 8 meeting was discretionary are "necessary and essential" to Vice Chancellor Glasscock's holding that Handler was not a partner, should be reversed. Unlike the pages of factual findings in the Standing Opinion directly addressing contract formation issues (A00055-63), none of Vice Chancellor Glasscock's statements on Handler's compensation following the November 8 meeting are "necessary and essential" to the standing question of whether an enforceable contract existed to support Handler's partnership claim and do not support dismissal of counterclaims III, IV and V based on the 2008 Letter on collateral estoppel grounds.

III. THE COURT BELOW ERRED IN DISMISSING HANDLER'S UNJUST ENRICHMENT CLAIM BASED ON CENTERVIEW'S ALLEGED FAILURE TO PAY HANDLER ANY COMPENSATION IN 2022 AND THE SEIZURE OF HANDLER'S PRIORITY CAPITAL ACCOUNT.

A. Question Presented

Whether the Court Below erred in dismissing, on collateral estoppel grounds, Handler's unjust enrichment claim based upon (a) Centerview's failure to pay Handler any compensation at all for the first eight months of 2022 when he earned Centerview [redacted], and (b) Centerview's seizure of [redacted] in Handler's priority capital account at his departure. (A00046.)

This issue was raised and preserved below (A01005-06) and considered by the Court Below (Ex. A at 10-14, 17-20).

B. Scope of Review

This Court "review[s] *de novo* the dismissal by the Court of Chancery of [amended counterclaims] under Rule 12(b)(6).'" *City of Dearborn Police and Fire Revised Ret. Sys. v. Brookfield Asset Mgmt. Inc.*, 314 A.3d at 1126 (quoting *Malpiede*, 780 A.2d at 1082). This Court also "review[s] a trial court's application of collateral estoppel de novo." *Rogers*, 208 A.3d at 346.

C. Merits of Argument

The Court of Chancery further erred in relying on Vice Chancellor Glasscock's few statements on Handler's compensation to dismiss Handler's unjust enrichment claim based upon (a) the failure to pay Handler any compensation for

the first eight months of 2022, when he earned more than [redacted] for Centerview, and (b) Centerview's seizure of the [redacted] in Handler's priority capital account at his departure. In both cases, the Court Below found that because Vice Chancellor Glasscock found that Handler's compensation was "subject to the Founder's discretion," Handler's unjust enrichment claim was barred by collateral estoppel. (Ex. A at 19-20.) But Vice Chancellor Glasscock's finding that "[t]he Founders had discretion to implement compensation principles flexibly," cannot reasonably be understood to mean that any such "flexibility" gave Centerview a right to pay Handler *nothing* in 2022, when he provided services that earned more than [redacted] for Centerview, or that Centerview could simply seize [redacted] of Handler's deferred monies being held in Handler's Priority Capital Account on his departure from the firm.

i. Unjust Enrichment Based on Unpaid 2022 Compensation

Accepting the allegations in the SAC as true for purposes of a motion to dismiss, in the first seven months of 2022 before resigning on August 2, 2022, Handler continued to have a strong year, closing multiple deals and generating substantial revenues for Centerview north of [redacted] in the first eight months. (A00312, ¶80.) If he had not been forced out of Centerview, Handler would have been paid approximately [redacted] under the compensation formula in the 2008

Letter, but Handler was not paid *any* compensation for his work in 2022 before or after his resignation. (*Id*.)

Vice Chancellor Glasscock's finding that "[t]he Founders had discretion to implement compensation principles flexibly, purportedly in a manner that benefited the firm and addressed issues for specific employees," (A00046), cannot reasonably be understood to mean that the Founders had the "flexibility" to pay Handler nothing for his 2022 contributions. *See, e.g.*, *Fleer Corp. v. Topps Chewing Gum, Inc.*, 539 A.2d 1060, 1062 (Del. 1988) ("Unjust enrichment is defined as 'the unjust retention of a benefit to the loss of another, or the retention of money or property of another against the fundamental principles of justice or equity and good conscience.'" (quoting 66 Am.Jur.2d, Restitution and Implied Contracts § 3, p. 945 (1973))).

In an explanatory footnote to this finding, Vice Chancellor Glasscock quoted from a December 2016 email from Pruzan to Handler that states "[o]ne compensation principle included 'revenue contribution to the . . . firm minus a charge for 'management fees' . . . adjusted for the profit points allocated to all other teams vs their annual contribution.'" (A00046, n.71, quoting A00079-81.) Rather than support dismissal of Handler's unjust enrichment claim based on his unpaid contributions that enriched Centerview in 2022, these clarifying statements concerning the parameters of Centerview's "discretion" over Handler's

compensation support the survival of that specific basis for Handler's unjust enrichment claim in an amount of at least [redacted], not its dismissal.

ii. Unjust Enrichment Based on Seized Priority Capital Accounts

Again, accepting the allegations in the SAC as true for purposes of a motion to dismiss, in 2012, Centerview created Priority Capital Accounts for Handler, St. Jean, Pruzan, Effron, and two others. (A00312, ¶81.) It is undisputed that Handler "received Priority Capital Amounts as part of his compensation from 2012-2015," but "did not receive Priority Capital Amounts after 2015." (A00046-47; A00312-13, ¶¶81-82.) Handler's receipt of Priority Capital Amounts benefited Centerview as it deferred compensation otherwise owed to Handler. (A00312-13, ¶¶81-82.) The funds in Handler's Priority Capital Account were fully earned by Handler and vested and deferred as an accommodation to Centerview during its early growth years. (*Id.*)

As of 2019, without informing Handler, Centerview had paid all of the other five individuals at Centerview with Priority Capital Accounts the money in their accounts in full—leaving Handler as the only remaining person at Centerview with a Priority Capital Account not paid out, more than [redacted] at the time of Handler's departure. (*Id.*, ¶¶83-84.) Centerview seized Handler's money in his Priority Capital Account on his departure despite it being owned by him. (*Id.*, ¶82.) Handler also alleges in the SAC unjust enrichment counterclaim (Count V) that the

Centerview Defendants were unjustly enriched by their seizure of Handler's [redacted] in his Priority Capital Account on his departure. (A00340, ¶160.)

The Court Below also dismissed this basis for Handler's unjust enrichment counterclaim (Count V) by stating "Count Five's assertion that Defendants were unjustly enriched by retaining amounts in Handler's Priority Capital Account owed under the 2008 Letter contradicts Vice Chancellor Glasscock's finding that Handler's compensation was at the discretion of the Founders." (Ex. A at 19.) Again, Vice Chancellor Glasscock's finding that "[t]he Founders had discretion to implement compensation principles flexibly, purportedly in a manner that benefited the firm and addressed issues for specific employees," (A00046), cannot reasonably be understood to mean that the Founders had the "flexibility" to simply seize [redacted] of Handler's deferred monies being held in Handler's Priority Capital Account on his departure from the firm. Nor does the Court Below account for Vice Chancellor Glasscock's finding that Handler was still "an employee with certain vested rights in Centerview." (A00065.)

CONCLUSION

For the foregoing reasons, the Opinion Below dismissing on collateral estoppel grounds counterclaims III (breach of contract), IV (breach of the implied covenant), and V (unjust enrichment) based on the 2008 Letter should be reversed with an order that the motion to dismiss counterclaims III, IV and V of the SAC be denied and, that the plenary action should proceed, as Vice Chancellor Glasscock intended, to address Handler's rights under the 2008 Letter.

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