



IN THE SUPREME COURT OF THE STATE OF DELAWARE

RAJA VENKATESH,

Plaintiff-Below Appellant,

v.

PRASAD GUNDUMOGULA,

Defendant-Below Appellee.

No. 181, 2026

Court Below: Court of Chancery of the
State of Delaware

C.A. No. 2025-1216-MTZ

OPENING BRIEF OF APPELLANT

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NATURE OF PROCEEDINGS

This appeal is from an order, entered by the Chancery Court (Zurn, V.C.), dismissing the Complaint of Appellant-Plaintiff Raja Venkatesh (“Plaintiff”), asserting a claim for breach of fiduciary duty against Appellee-Defendant Prasad Gundumogula (“Defendant”). Plaintiff was a large stockholder of the travel technology company, Mondee Holdings, Inc. (“Mondee”), which was led and controlled at all relevant times by Defendant. As set forth in further detail below, Plaintiff’s claim is premised on Defendant’s unlawful efforts to prevent Plaintiff from selling his Mondee shares through the use of indisputably erroneous restrictive legends. Defendant did so as part of a scheme that was designed to prevent numerous other Mondee stockholders from selling their shares, with the goal of artificially inflating Mondee’s stock price by minimizing the tradeable shares so to maximize the value of Defendant’s Mondee stock, which he freely sold to earn over \$16 million in proceeds as a result.

On November 24, 2025, Defendant moved to dismiss Plaintiff’s Complaint. In his Opening Brief, Defendant argued that Plaintiff’s claim was subject to dismissal for two reasons: (1) Plaintiff’s fiduciary duty claim was preempted by a registration rights agreement Plaintiff had previously entered into with Mondee, prior to Plaintiff’s receipt of shares, that required Mondee to register Plaintiff’s shares for resale with the SEC; and (2) the Complaint did not adequately allege

Defendant's personal involvement in the restriction of Plaintiff's shares, as necessary to plead a claim against him. The motion was fully briefed on February 9, 2026 and the Chancery Court held oral argument on April 17, 2026, after which, on that same day, it granted Defendant's motion. The Chancery Court dismissed Plaintiff's complaint based on the first ground raised by Defendant, holding that Plaintiff's claim was preempted because the rights and obligations upon which Plaintiff's fiduciary duty claim were based were addressed by the registration rights agreement. The Chancery Court did not reach Defendant's second argument alleging a pleading deficiency.

There are four issues on appeal. Specifically, those issues are whether the Chancery Court: (1) correctly determined that the Registration Rights Agreement "expressly addressed" Mondee's obligation that it remove the restrictive legends that Defendant was improperly maintaining on Plaintiff's shares such that Plaintiff's fiduciary duty claim was preempted by contract; (2) correctly determined that, under Delaware law – including the Supreme Court's decision in *Nemec v. Shrader*, 991 A.2d 1120 (Del. 2010) – Plaintiff's fiduciary duty claim is precluded if a dispute arises from rights and obligations addressed by contract, *even if* such claim independently arises from basic principles of fiduciary duty; (3) properly took judicial notice of unadjudicated allegations made in two pleadings that Plaintiff previously filed in New York courts, for purposes of determining the scope of the

contractual obligations to Plaintiff; and (4) should be directed to find that the Complaint adequately alleges Defendant's involvement in the restriction of Plaintiff's shares, as necessary to plead his claim.

As set forth below, Plaintiff submits that the Chancery Court committed reversible error in dismissing the Complaint, as each of the foregoing legal issues should have been resolved in Plaintiff's favor. For this reason, Plaintiff seeks reversal of the dismissal order, and reinstatement of his claim.

SUMMARY OF ARGUMENT

Plaintiff, formerly a large stockholder of Mondee Holdings, Inc. (“Mondee”), asserts a single fiduciary duty claim against Defendant who was, at all relevant times, Mondee’s CEO, director, and controller. Plaintiff’s claim is based on Defendant’s maintenance of wrongful restrictive legends on Plaintiff’s Mondee’s shares in order to prevent Plaintiff from selling, thereby minimizing the tradeable Mondee shares in the market and artificially inflating Mondee’s stock price, so that Defendant could ultimately maximize the value of his Mondee holdings and realize a windfall in his sale of Mondee stock. The Chancery Court’s dismissal of Plaintiff’s fiduciary duty claim, on the ground that the dispute arises from obligations “expressly addressed” by the Registration Rights Agreement, was, respectfully, erroneous for three separate reasons, each of which requires reinstatement of Plaintiff’s claim:

1. ***First***, the Chancery Court’s holding – that the Registration Rights Agreement preempts Plaintiff’s fiduciary duty claim, because the Registration Rights Agreement “expressly addresses” the rights and obligations upon which Plaintiff’s claim is based – is founded on a misreading of that agreement. The Registration Rights Agreement, by its express terms, simply addresses Mondee’s obligation to register Plaintiff’s Mondee’s shares for resale with the SEC. Plaintiff’s claim is ***not*** that Mondee failed to do so, and indeed, there is no dispute that Plaintiff’s shares were always registered for resale. Critically, absent from the

Registration Rights Agreement is any provision even suggesting – let alone “expressly addressing” – an obligation on Mondee’s part to remove restrictive legends from shares upon Plaintiff’s request.

2. ***Second***, the Chancery Court incorrectly held that Plaintiff’s fiduciary duty claim is preempted by the Registration Rights Agreement ***even if*** it arises independently from basic fiduciary duties. In doing so, the Chancery Court misinterpreted the Supreme Court’s decision in *Nemec*, 991 A.2d 1120 and its progeny as requiring dismissal of fiduciary duty claims whenever the alleged conduct is addressed by contract. But that is not *Nemec*’s holding. Rather, *Nemec*, and the weight of case law before and after, holds that a fiduciary duty claim is preempted by a contract only where the claim arises solely under, and is dependent on, the rights and obligations created by that contract. Here, Plaintiff’s claim arises from bedrock fiduciary duty principles – specifically, Defendant’s duty not to intentionally and discriminatorily interfere with Plaintiff’s fundamental right to sell his shares for Defendant’s personal financial gain. The Chancery Court’s erroneous interpretation of the applicable law led to an incorrect finding that Plaintiff’s claim is subject to dismissal even though it arose from duties independent of contract.

3. ***Third***, the Chancery Court improperly took judicial notice of two complaints Plaintiff previously filed in New York courts against Mondee. Contrary to the Chancery Court’s assertion that it was taking judicial notice simply of the fact

that the complaints were filed, the Chancery Court instead relied directly on specific arguments and contract interpretations contained in those complaints, for purposes of determining the scope of Mondee's contractual obligations to Plaintiff under the Registration Rights Agreement, and ultimately determining that those obligations preempt Plaintiffs' claim. The Chancery Court's decision contravened well-established Delaware case law that courts may not take judicial notice of allegations made in foreign courts for their truth.

4. ***Finally***, this Court should reject Defendant's argument – which the Chancery Court declined to review – that the Complaint does not allege sufficient facts showing Defendant's personal involvement in the restriction of Plaintiff's shares, as necessary to plead a fiduciary duty claim against Defendant. The Complaint pleads in detail Defendant's scheme to restrict Mondee stockholders' shares (including Plaintiff's), his motivation for doing so, the actions he took in furtherance of that scheme, and the resulting damages to Plaintiff. Plaintiff pleads more than is required to survive a motion to dismiss. This Court should address this issue on appeal, and find that Plaintiff has pled sufficient facts to support his claim, so that this case can proceed to discovery.

STATEMENT OF FACTS

A. Mr. Venkatesh, Mondee, Gundumogula, and the Merger

In March 2017, Mr. Venkatesh became the CFO of Mondee Inc. (“Legacy Mondee”), a private company operated a travel technology business. (A12 ¶ 2, A17-18 ¶ 16, A18 ¶ 18.) Legacy Mondee was co-founded by Mr. Gundumogula, who had served as the company’s CEO and Chairman since 2015 and, as of 2021, was its controlling shareholder and one of two directors – the other being his wife. (A18 ¶ 17.) Mr. Venkatesh was also a large stockholder of Legacy Mondee, having previously been granted 11,531,627 Class D Units in the company. (A18 ¶ 18.)

On July 18, 2022, to take Legacy Mondee public, the company merged with a SPAC (the “Merger”) that was then renamed Mondee Holdings, Inc. (A18-19 ¶ 19.)¹ Concurrently with the Merger, Mondee and certain accredited investors entered into a Registration Rights Agreement (the “RRA”) that granted those investors customary registration rights with respect to their newly obtained Mondee stock. (A135-56.) Specifically, Section 2.1.1 of the RRA required Mondee to file with the SEC a registration statement registering Mondee common stock for resale, and then to “use its commercially reasonable efforts” to have such registration statement declared effective by the SEC. (A139 at § 2.1.1.) The RRA also contained a “lock-up” provision prohibiting the resale of Mondee stock until, at the latest, six

¹ Mr. Venkatesh left Mondee in September 2022 after it went public. (A19-20 ¶ 23.)

months after the July 18, 2022 Merger (January 18, 2023). (A136; A149 at § 5.1.1.)

On October 3, 2022, consistent with Mondee’s RRA obligations, Mondee filed a Form S-1/A registration statement (the “Registration Statement”) for purposes of registering Mondee common stock for resale. (A19 ¶ 20.) The Registration Statement, which the SEC declared effective on October 12, 2022, specifically indicated that shares of Mondee stock that Mr. Venkatesh would (eventually) own were being registered for resale. (A19 ¶¶ 20, 22.)

B. Mr. Venkatesh Exchanges His Legacy Mondee Units for Improperly Restricted Mondee Stock.

In January 2023, Mondee sent Mr. Venkatesh and other Legacy Mondee unitholders draft redemption agreements and other ancillary documents necessary to redeem their Legacy Mondee units for shares in the newly public Mondee. (A20 ¶ 26.) One of those documents was a letter prepared for Mr. Venkatesh’s signature confirming that the Mondee shares he was to receive were registered for resale, and authorizing Mondee’s transfer agent, Continental Stock Transfer & Trust Company (“Continental”), to remove any restrictive legends that could prevent the shares’ transfer or sale (the “Legend Removal Letter”). (*Id.*) Before agreeing to his redemption agreement, Mr. Venkatesh sought confirmation that he would immediately be able to sell his Mondee shares because he intended to promptly sell them and realize the over \$8 million dollars in proceeds they were then worth. (A21 ¶¶ 28-29.) To that end, in mid-April 2023, Mr. Venkatesh asked, and received from

Mondee’s external counsel, express confirmation that Mr. Venkatesh would receive freely tradeable Mondee shares. (A21 ¶ 28.)

Satisfied by these representations, on April 24, 2023, Mr. Venkatesh executed a Redemption Agreement, countersigned by Mr. Gundumogula on Legacy Mondee’s behalf, providing that Mr. Venkatesh would surrender his Legacy Mondee units in exchange for 660,871 shares of Mondee common stock (the “Shares”). (A21-22 ¶¶ 28-31.) Additionally, Mr. Venkatesh signed the Legend Removal Letter, which stated:

In order to present all facts necessary to authorize the transfer agent for Mondee ... to remove any applicable restrictive legends and stop transfer instructions from 660,871 shares of common stock of the Company (the “Securities”) held by Raja Venkatesh (the “Holder”), the undersigned hereby represents that:

- a) The Securities were registered for resale pursuant to the Registration Statement ..., which was declared effective by the SEC on October 12, 2022.
- b) Holder has confirmed with the Company that the Registration Statement is currently effective ...

(A22-23 ¶ 32; A46-47.)

C. Mr. Gundumogula’s Scheme to Inflate Mondee’s Stock Price.

Unbeknownst to Mr. Venkatesh, when he executed the Redemption Agreement in late April 2023, Defendant had already established a scheme to restrict stockholders’ Mondee shares in an effort to artificially inflate the price of Mondee stock, so as to increase the value of his enormous Mondee stock holding as well as

the proceeds of a (to be effectuated) massive stock sale. (A23-31 ¶¶ 36-53.) Broadly, as set forth below, Defendant caused Mondee and Continental to maintain, and actively prevented the removal of, erroneous restrictive legends on numerous stockholders' shares, preventing the sale of such shares unless and until Defendant, at his sole discretion, agreed to remove the legends. (*Id.*)

The improper restriction on the transfer of Mondee stock was not a mistake or an isolated instance. Indeed, in late March 2023, Mondee's external counsel that handled the redemptions alerted both Mondee's corporate counsel and Mondee's transfer agent, Continental, that numerous stockholders had complained their shares were improperly encumbered by inapplicable restrictive legends. (A24-25 ¶ 39.) The practice that quickly emerged to deal with these complaints was that Mondee (as directed by Defendant) would authorize erroneous legends to be removed only if two conditions were met: (1) the stockholder specifically requested it, and (2) Defendant agreed to it. (A25 ¶ 40.)

This practice is reflected in the experiences of Mr. Venkatesh and numerous other Mondee shareholders, including:

- 1. Vikas Prabhakar:** Mr. Prabhakar, a former Mondee employee, directly asked Mr. Gundumogula to remove erroneous restrictive legends from his shares in March 2023, but Mr. Gundumogula refused because, as Mr. Gundumogula explicitly told him, doing so would cause Mondee's stock price to decline. (A25 ¶ 41.) Mr. Prabhakar repeated his request in August 2023 after Mondee terminated him, but Mr. Gundumogula again refused to remove the legends because Mr. Prabhakar did not agree to execute an overly restrictive settlement agreement with Mondee. (A25-26 ¶ 42.)

2. Michael Thomas: Mr. Thomas, a large Legacy Mondee unitholder who had been promised by Mr. Gundumogula that his units would be redeemed for tradeable Mondee shares, repeatedly asked Mr. Gundumogula to remove the improper legends from his shares. Mr. Gundumogula refused, and instead gave Mr. Thomas numerous excuses as to why Mondee would not remove the legends – for example, that Mondee was spending too much on litigations – and ultimately never agreed to do so. (A26-27 ¶¶ 43-44.) Mr. Thomas understands that Mr. Gundumogula did this because he did not want to risk lowering Mondee’s stock price. (A27 ¶ 45.)

3. Sanjay Kopalkar: Mr. Kopalkar, a former Mondee employee, complained for several months to Mondee and Continental beginning in June 2023 that his Mondee shares were improperly encumbered by inapplicable restrictive legends. In August 2023, Mondee’s General Counsel informed Continental that, while Mr. Gundumogula had approved the removal of legends from certain other stockholders’ shares, he did not approve the same for Mr. Kopalkar – confirming Mr. Gundumogula controlled the decision as to whether to remove the improper legends. (A27-28 ¶ 46.) Because Mr. Gundumogula refused Mr. Kopalkar’s demand, the restrictive legends were not removed from Mr. Kopalkar’s shares.

4. Vajid Jafri: Mr. Jafri was Legacy Mondee’s CEO and Chairman before Mr. Gundumogula. Mr. Jafri, who also received Mondee shares with improper restrictive legends, directly approached Mr. Gundumogula to have them removed. While Mr. Gundumogula initially tried to evade Mr. Jafri’s request by referring him to Continental, Mr. Jafri ultimately made his demand that the legends be removed directly to Mr. Gundumogula. Only upon this demand were the restrictive legends removed. (A28 ¶ 47.) Mr. Jafri understood Gundumogula to be the only person with the authority to remove restrictive legends from Mondee shares, and that he did so for Mr. Jafri because Mr. Jafri “knew too much” about Mr. Gundumogula’s questionable business practices. (A29 ¶ 48.)

5. Dale Okuno: Mr. Okuno, a large Mondee shareholder, secured the removal of the improper legends from his Mondee shares only after making the demand directly to Mr. Gundumogula, who Mr. Okuno understood was the sole person at Mondee holding such removal authority. (A30-31 ¶¶ 50-51.) Even after Mr. Gundumogula agreed to remove the legends, Mr. Gundumogula repeatedly asked Mr. Okuno not to sell any Mondee shares, and even promised Mr. Okuno that if he agreed to not sell his stock, and

Mondee's stock price declined, Mr. Gundumogula would compensate him for any loss. (A30-31 ¶ 51.)

6. Timothy Turner: Mr. Turner, Legacy Mondee's co-founder and initial CFO, secured the removal of erroneous legends from his shares only after he called Mr. Gundumogula and demanded that they be removed. (A31 ¶ 52.)

The experiences of these individuals, in addition to Mr. Venkatesh's described below, establishes that Mr. Gundumogula (i) held sole authority over whether to maintain or remove legends to or from Mondee stockholders' shares, and (ii) employed a scheme to restrict stockholders from selling their Mondee shares. (A31 ¶ 53.)

The reason for Mr. Gundumogula's scheme is clear – he sought to limit the amount of Mondee's stock available in the market, in order to artificially inflate Mondee's stock price and thereby increase the value of his massive Mondee stock holding and his own sale proceeds. (A38-39 ¶¶ 69-74.) At all relevant times, Mr. Gundumogula was Mondee's controlling stockholder – initially owning over 80% of Mondee's common stock (A19 ¶ 21), and roughly 40% of Mondee's common stock as of April 2024 (A39 ¶ 74.) And, in June 2023, several months after his scheme began, he sold 1,659,404 shares of Mondee stock in a secondary stock offering undertaken by Mondee (the "Secondary Offering"), through which he received **\$16,594,040** in sale proceeds. (A38-39 ¶ 72.) Mr. Gundumogula's sale, of the same class of shares held by Mr. Venkatesh, took place at the same time Mr. Venkatesh's shares were restricted, and at the same time Mr. Gundumogula refused

Mr. Venkatesh's requests that they be removed. This is despite the fact that the shares held by both Plaintiff and Defendant were the exact same in all regards.

D. Mr. Venkatesh Finds That Restrictive Legends Are Encumbering His Shares, but Mr. Gundumogula Refuses to Remove Them.

Mr. Venkatesh was not one of the lucky Mondee stockholders to receive Mr. Gundumogula's approval to remove the erroneous restrictive legends from his Mondee shares. On April 27, 2023, two days after Plaintiff's redemption, Mondee's corporate counsel emailed Continental an instruction to transfer the Mondee shares to Mr. Venkatesh, and attached the Legends Removal Letter, which instructed Continental to ensure that Mr. Venkatesh's shares were unencumbered by any legends. (A31-32 ¶ 54.) Less than one hour later, the same attorney was apparently forced to rescind his prior instruction, informing Continental that the Legends Removal Letter was "attached in error" and that "[t]here are no removal of legends associated with this transfer." (*Id.*) This was obviously no accident, but part of Defendant's scheme to restrict the transfer of Mondee shares.

In late May 2023, after contacting Continental about his Shares, Mr. Venkatesh received a Continental account statement showing that three restrictive legends (the "Restrictive Legends") had been applied to the Shares, prohibiting their sale. (A32-33 ¶¶ 55-56.) The Restrictive Legends incorrectly indicated that the Shares were (1) not registered pursuant to an effective registration statement, (2) subject to a lock-up provision, and (3) owned by an "affiliate" and therefore

considered “control securities.” (A32-33 ¶ 56.) Defendant has never dispute that each of the Restrictive Legends was unauthorized and invalid. In reality, the Shares were (1) already registered for resale pursuant to the Registration Statement, (2) not subject to any lock-up as the original lock up had expired, and (3) not owned by an “affiliate,” as Mr. Venkatesh was no longer employed by Mondee. (A34 ¶ 58.)

Beginning in late May 2023, and continuing over the next half year, Mr. Venkatesh made repeated requests to Mr. Gundumogula and others at Mondee and Continental to remove the Restrictive Legends from his Shares, as necessary for him to sell them. (A35-38 ¶¶ 61-68.) Specifically, while Mr. Venkatesh initially directed his many requests to various Continental and Mondee employees – as he was then unaware of the scheme Defendant had orchestrated – Mr. Venkatesh eventually contacted Defendant on two separate occasions, in late October and early November 2023, to ask that the Restrictive Legends be removed. (A35-37 ¶¶ 62-65.) Defendant ignored those requests, and only responded to Mr. Venkatesh (in late November 2023, by text message) after Mr. Venkatesh’s counsel sent Mondee a formal letter demanding that the Restrictive Legends be removed. (A37 ¶ 67.) At no point did Defendant indicate any inclination to remove the Restrictive Legends. (*Id.*) Indeed, neither Mr. Gundumogula nor Mondee ever provided Mr. Venkatesh with an explanation for why they refused to remove the Restrictive Legends from

the Shares. (A37-38 ¶ 68.)²

E. After Mondee's Stock Price Drops, Mondee Agrees to Sell Itself to Gundumogula Through Bankruptcy.

Since May 2023, when Mr. Venkatesh's Shares were worth over \$8 million, Mondee's stock price dropped precipitously. (A40 ¶ 77.) Today, the Shares are worthless. On January 14, 2025, while a lawsuit Mr. Venkatesh had filed against Mondee and Mr. Gundumogula was pending in New York state court (*see infra*), Mondee announced that it had entered into a "restructuring support agreement" pursuant to which Mondee simultaneously filed a voluntary Chapter 11 bankruptcy petition. On April 4, 2025, through Mondee's reorganization plan, Mondee sold its assets to a newly formed company, Tabhi, which is majority-owned by Mr. Gundumogula, the company's new CEO. (A40 ¶¶ 78-79.) On May 28, 2025, the bankruptcy court approved Mondee's Plan of Liquidation, under which there are no funds available to satisfy any claims by unsecured creditors. (A41 ¶ 81.) As such, while Mr. Gundumogula was able to place Mondee back in his pockets and extinguish any claims by the victims of his scheme, Mr. Venkatesh lost everything. (A41 ¶ 82.)

² As of May 2023, Mr. Venkatesh owned nearly 1% of Mondee's common stock. (A38 ¶ 71.) The sale of all of his Shares would have contributed to a decline in Mondee's stock price. (*Id.*)

F. Procedural History

1. Prior Litigation in New York and Plaintiff's Claim for Breach of Fiduciary Duty

Mr. Venkatesh initially brought suit in federal court, asserting, *inter alia*, a federal securities fraud claim against Mondee, and a breach of fiduciary duty claim against Defendant. Upon the federal court's dismissal of the federal securities fraud claim (and only that claim), *see Venkatesh v. Mondee Holdings, Inc.*, 2024 WL 3904592, at *5 (S.D.N.Y. Aug. 21, 2024),³ Mr. Venkatesh re-filed his action in New York state court in October 2024, alleging a breach of contract claim against Mondee⁴ and reasserting his fiduciary duty claim against Defendant. (A123-27 ¶¶ 81-110; A132 ¶¶ 148-153.) The New York trial court dismissed Mr. Venkatesh's claim against Defendant for lack of personal jurisdiction, without reviewing the claims on the merits. (A181 at 9:11-13.)

Accordingly, Mr. Venkatesh re-filed his fiduciary duty claim in the Chancery Court. As set forth below, Mr. Venkatesh's claim is premised on Defendant's efforts to discriminately restrict Plaintiff's Shares through the use of restrictive legends – as part of a larger scheme targeting numerous other stockholders – in order to inflate

³ The federal court expressly did *not* review Plaintiff's claim for fiduciary duty given that, having dismissed Plaintiff's securities fraud claim, it lacked pendent jurisdiction over any state-law claims. *See Venkatesh*, 2024 WL 3904592, at *6.

⁴ Plaintiff's claims against Mondee were automatically stayed on January 14, 2025 when Mondee filed for bankruptcy. Plaintiff eventually voluntarily dismissed his claims against Mondee after it sold all its assets to Tabhi. (*See supra* at 20.)

Mondee's stock price and thereby increase the value of Defendant's stock holdings and obtain enormous sale proceeds. (A41-42 ¶¶ 83-88.)

2. The Chancery Court Dismisses the Complaint.

On April 17, 2026, the Chancery Court issued an order (the "Order") dismissing Plaintiff's claim for breach of fiduciary duty pursuant to Rule 12(b)(6). The Court did not reach Defendant's argument that Plaintiff had failed to plead sufficient facts showing Defendant's involvement in the restriction of Plaintiff's Shares, as necessary to support his claim. (A70-73.) Instead, the Chancery Court dismissed upon finding that the RRA "preempts Plaintiff's breach of fiduciary duty claim" because the claim "rests on the company's alleged failure to honor its contractual obligations." (A10-11.)

ARGUMENT

I. THE CHANCERY COURT ERRED IN DETERMINING THAT THE RRA “EXPRESSLY ADDRESSED” DEFENDANT’S OBLIGATION NOT TO PREVENT PLAINTIFF FROM SELLING THE SHARES.

A. Question Presented

Whether the Chancery Court erred in interpreting the RRA as “expressly addressing” Defendant’s obligation not to prevent Plaintiff from selling the Shares, such that Plaintiff’s claim was subject to dismissal on the ground Plaintiff’s rights arose in contract. (*See* A10-11; A225-35.)

B. Scope of Review

The Supreme Court undertakes a *de novo* review of the Chancery’s Court’s determinations as to “questions of law and contractual interpretation.” *Bako Pathology LP v. Bakotic*, 288 A.3d 252, 266 (Del. 2022) (citation omitted).

C. Merits of Argument

The Chancery Court dismissed Plaintiff’s claim based on a principle of Delaware law providing that, under certain circumstances, “where a dispute arises from obligations that are expressly addressed by contract, that dispute will be treated as a breach of contract claim.” *Nemec*, 991 A.2d at 1129 (cited by Order at A10).⁵

⁵ As discussed *infra* at Section II, the Chancery Court’s reading of *Nemec* is overly narrow. Under Delaware law generally, and *Nemec* specifically, a fiduciary duty claim premised on rights and obligation that are coextensive with those created under a contract will be dismissed only to the extent the fiduciary duty claim arises solely in relation to that contract and does not separately arise from independent fiduciary duties. As shown below, the Chancery Court ignored this law in dismissing

In its Order, the Chancery Court incorrectly interpreted the RRA as “expressly addressing” Mondee’s “duty to respond to Plaintiff’s request” that the Restrictive Legends be removed from the Shares, and thereby preempted Plaintiff’s fiduciary duty claim as having “arose in contract.” (A10-11.) As set forth below, this holding was based on an erroneous reading of the RRA and should be reversed.

The Chancery Court, specifically, found that two provisions of the RRA – Sections 2.1.1 and 3.1.16 – created Mondee and Defendant’s purported duty to remove the improper restrictive legends. (*See* A10-11.) To start, Section 2.1.1 provides in relevant part:

Within thirty (30) calendar days following the Closing Date, the Company shall submit to or file with the Commission a Registration Statement for a Shelf Registration on Form S-1 (the “Form S-1 Shelf”) ... covering the resale of all the Registration Securities ... and shall use its commercially reasonable efforts to have such Shelf declared effective as soon as practicable after the filing thereof.

(A139 at § 2.1.1.) But this provision – and indeed, the RRA in general – served a specific purpose: providing covered stockholders with an assurance that Mondee would register their shares with the SEC. (*See supra* at 12.) While that obligation may have *related* to Plaintiff’s ability to sell his shares, the actual obligation created by this provision was simply for Mondee to file a registration statement and “have

Plaintiff’s claim on the ground that the RRA created rights coextensive with those under which Plaintiff’s fiduciary duty claim arises. (*See infra* at § II.) This Section, however, addresses whether the rights underlying Plaintiff’s fiduciary duty claim are actually, in the first instance, addressed by the RRA.

[it] declared effective.” Plaintiff’s claim is *not* that Mondee failed to file a registration statement. There is no dispute that Mondee filed the Registration Statement and that the SEC declared it effective in October 2022, such that the Shares were indisputably registered for resale. (*See* A19 ¶¶ 20-22.)

Moreover, RRA § 2.1.1 does not address the removal of the Restrictive Legends, or otherwise provide a contractual obligation that Mondee, or Defendant, take any steps after the registration to ensure Plaintiff’s shares be freely tradeable. Indeed, the cases that deal with compliance with registration rights agreements center on companies’ failure to *file* the registration statement necessary to register stockholders’ shares. *See, e.g., BioLife Sols., Inc. v. Endocare, Inc.*, 838 A.2d 268, 281-82 (Del. Ch. 2003); *In re Stillwater Cap. Partners Inc. Litig.*, 851 F. Supp. 2d 556, 574 (S.D.N.Y. 2012).

Section 3.1.16, in turn, is equally inapplicable to Defendant’s efforts to prevent Plaintiff from selling his registered shares. That provision required Mondee to, “in good faith, cooperate reasonably with, and take such customary actions as may reasonably be requested by the participating Holders, consistent with the terms of this Agreement, ***in connection with such Registration.***” (A145-46 at § 3.1.16 (emphasis added).) This provision, by its terms, does not create or even suggests a duty to respond to a request to remove restrictive legends from already registered shares. Instead, it explicitly relates to good-faith cooperation “***in connection with***

[the] Registration” of the Shares. (A145-46 at § 3.1.16.)⁶ Again, Plaintiff’s claim is not premised on any allegation that Mondee failed to cooperate or otherwise act in good faith in connection with the registration of his Shares. Put simply, the Shares were already registered for resale. It is Defendant’s actions ***after*** the Shares were registered that forms the basis of Plaintiff’s fiduciary duty claim.

The provisions cited by the Order, at base, have nothing to do with a fiduciary’s duty to refrain from unlawfully preventing a Mondee stockholder from selling his already registered shares through the use of restrictive legends. *See Sorrento Therapeutics, Inc. v. Mack*, 2023 WL 5670689, at *24 (Del. Ch. Sept. 1, 2023) (declining to dismiss where contract “has no bearing on [fiduciary duty] claim.”). Indeed, nowhere does the RRA mention restrictive legends or even the restriction of shares generally.⁷ At a minimum, Plaintiff’s fiduciary duty claim is

⁶ The Order’s misreliance on RRA § 3.1.16 is demonstrated by its failure to quote the entire provision. Indeed, in finding that Section 3.1.16 governed Mondee’s “duty to respond to Plaintiff’s request” to remove the Restrictive Legends, the Order quotes Section 3.1.16 as requiring Mondee “to ‘in good faith, cooperate reasonably with, and take such customary actions as may reasonably be requested by’ the stockholders.” (A10.) But the Order ignored the critical conditional language that such obligations were “***in connection with [the] Registration.***” (A145-46 at § 3.1.16 (emphasis added).) The RRA generally, and Section 3.1.16 specifically, is expressly limited to Plaintiff’s rights, and Mondee’s obligations, related to share registration. The Chancery Court’s expansion of the RRA to govern Mondee’s “obligation to support Plaintiff in selling his shares” (*see* A10) is at the heart of its error.

⁷ The only provision that relates in any way to the restriction of Mondee shares is Section 5.1.1, which applied a lock-up to all Mondee shares, but that lock-up expired months before Plaintiff received the Shares. (*See supra* at 12-13.)

not premised on “obligations that are *expressly* addressed” by that agreement. *Nemec*, 991 A.2d at 1129 (emphasis added); *see Artoss, Inc. v. Artoss GmbH*, 2021 WL 706345, at *7 (D. Del. Feb. 23, 2021) (fiduciary duty claim was not precluded by contract rights where it was “unclear whether [company] breached the [] Agreement”), *report and recommendation adopted*, 2021 WL 2138544 (D. Del. Mar. 11, 2021).

The Chancery Court’s decision to read into the RRA an obligation that plainly does not exist under its express terms, and to dismiss Plaintiff’s claim for being duplicative of purported rights under the RRA, was erroneous. *See Diem-II, LLC v. Maisonette Inc.*, 2026 WL 922982, at *15 (Del. Ch. Apr. 6, 2026) (“I cannot conclude at this stage that Plaintiffs’ fiduciary duty claim is wholly duplicative of their breach of contract claim.”). The Order should be reversed for this reason alone.

II. THE CHANCERY COURT ERRED IN DETERMINING PLAINTIFF’S CLAIM IS PRECLUDED BY THE REGISTERED RIGHTS AGREEMENT *EVEN IF* HIS CLAIM ARISES FROM INDEPENDENT FIDUCIARY DUTY PRINCIPLES

A. Question Presented

Whether the Chancery Court erred in holding that the RRA preempts Plaintiff’s claim for breach of fiduciary duty even where the rights and duties forming the basis of Plaintiff’s claim arise independent of contract. (*See* A10-11; A225-35.)

B. Scope of Review

The Supreme Court employs *de novo* review when it “reviews a trial court’s grant of a motion to dismiss,” including in addressing “[q]uestions of law.” *City of Wilmington v. Nationwide Ins. Co.*, 154 A.3d 1124, 1127 (Del. 2017) (citation omitted).

C. Merits of Argument

Even if this Court were inclined to accept the Chancery Court’s determination that the RRA “expressly addresses” Defendant’s duty not to unlawfully prevent Plaintiff from selling the Shares (it does not), the Order should still be reversed because it is premised on an erroneous legal holding that Plaintiff’s claim cannot survive even though it arises from independent and fundamental fiduciary duties. As set forth below, the Court’s holding is erroneous as a matter of law because (1) *Nemec* and its progeny permit claims to survive despite co-extensive contracts where

the claims independently arise from basic fiduciary duties; and (2) the contractual provisions at issue are discretionary provisions that do not preempt fiduciary duty claims premised on a fiduciary's improper use of that discretion.

1. Plaintiff's Claim Survives Because It Arises from Independent and Fundamental Fiduciary Duties.

The Chancery Court's holding was primarily grounded in this Court's decision in *Nemec*, 991 A.2d 1120. (See A10; *see also* A276 at 9-12 (Chancery Court, at oral argument, questioning how to reconcile diverging trial court decisions with the "obligation to follow Supreme Court precedent" set forth in *Nemec*.) But the Court's reading of *Nemec* to foreclose independent fiduciary duty claims, where the relevant fiduciary obligations overlap with obligations created under a contract, is inconsistent with Delaware law, subsequent cases interpreting and applying *Nemec*, and indeed the holding of *Nemec* itself.

In *Nemec*, this Court reviewed parallel claims asserted by employee-stockholders for breach of contract and breach of fiduciary duty, both of which alleged that company directors caused the company to breach an officer's stock rights plan by redeeming the plaintiffs' shares at a time that prevented them from participating in a transaction that would have increased the redeemed value of their shares. 991 A.2d at 1125, 1128-30. This Court, in holding that the claim was foreclosed for being subsumed in the stock rights plan, reasoned that:

Even though the Directors caused the Company to redeem the

plaintiffs' shares when it did, the fiduciary duty claim still arises from a dispute relating to the exercise of a *contractual* right – the Company's right to redeem the shares of retired nonworking stockholders. That right was not one that attached to or devolved upon all the Company's common shares generally, irrespective of a contract. Rather, that right was solely a creature of contract, and attached only to those shares that retired stockholders acquired under the Stock Plan. As a consequence, the nature and scope of the Directors' duties when causing the Company to exercise its right to redeem shares covered by the Stock Plan were intended to be defined solely by reference to that contract.

Id. at 1129 (emphasis in original). In other words, the plaintiffs were barred from asserting a fiduciary-duty claim because the rights underlying the claim were based entirely on – and was “solely a creature of” – the plaintiffs' contractual relationship with the company, and therefore was simply seeking to enforce a contract right.⁸ The Chancery Court's reading of *Nemec* to preclude independent fiduciary duty claims where contractual duties may also overlap “on the same facts” is simply not

⁸ The authority cited in *Nemec* on this point do not hold differently. Those cases either permitted a fiduciary duty claim to proceed because it was premised on “intentional misconduct” separate from contractual obligations, *see Schuss v. Penfield Partners, L.P.*, 2008 WL 2433842, at *10 (Del. Ch. June 13, 2008), or dismissed such claims because they were not premised on duties owed generally to stockholder but arose from specific contract rights. *See Madison Realty Partners 7, LLC v. Ag ISA, LLC*, 2001 WL 406268, at *6 (Del. Ch. Apr. 17, 2001) (claim premised on defendant's failure to comply with partnership agreement provision requiring 120-Day notice before ceasing capital contributions); *Blue Chip Cap. Fund II Ltd. P'ship v. Tubergen*, 906 A.2d 827, 832 (Del. Ch. 2006) (claim premised on company's failure to distribute asset sale proceeds according to criteria established by certificate of incorporation); *Gale v. Bershad*, 1998 WL 118022, at *5 (Del. Ch. Mar. 4, 1998) (plaintiff's “claimed right” was not “shared equally with the Common [shares]” but “arises from the [] contractual promise”); *Moore Bus. Forms, Inc. v. Cordant Holdings Corp.*, 1995 WL 662685, at *6 (Del. Ch. Nov. 2, 1995) (“The rights [plaintiff] seeks to have vindicated are contractual, not fiduciary, in nature”).

supported by the *Nemec* holding.

Immediately after *Nemec* was decided, then Chancellor Chandler issued a decision in *Grayson v. Imagination Station, Inc.*, 2010 WL 3221951 (Del. Ch. Aug. 16, 2010) recognizing that, consistent with *Nemec*, “[w]here there is an independent basis for the fiduciary duty claims apart from the contractual claims, even if both are related to the same or similar conduct ... the fiduciary duty claims will survive.” *Id.* at *7-8 (citation and quotation marks omitted). There, Chancellor Chandler dismissed a fiduciary duty claim only because, as in *Nemec*, the claim arose “solely from the [] Agreement and not from any fiduciary duty independently owed to the shareholders in general,” such that the plaintiff could not prevail on any fiduciary duty theory “unless he can first show that the [] Agreement was breached.” *Id.* In other words, *Grayson*, like *Nemec*, recognized that a fiduciary duty claim will be precluded *only* if it “completely hinges” on the breach of a contract and cannot stand independently on a fiduciary duty owed to shareholders.⁹ *Id.* at *8.

Chancellor McCormick recently came to the same conclusion in *Mehra v. Teller*, 2023 WL 2260640 (Del. Ch. Feb. 28, 2023), where the plaintiff had asserted

⁹ Delaware courts came to this conclusion before *Nemec* and *Grayson*. See *Grunstein v. Silva*, 2009 WL 4698541, at *6 (Del. Ch. Dec. 8, 2009) (a parallel claim for fiduciary duty will “survive[] where it may be maintained independently of the breach of contract claim”). It is also consistent with the view of “[s]cholars [who] explain that a contract claim can coexist with a fiduciary duty claim, because fiduciary obligations overlay all rights and powers that the fiduciary can exercise.” *Ban v. Manheim*, 339 A.3d 41, 72 (Del. Ch. 2025) (citing law journal articles).

both a contract claim under an LLC Agreement and a fiduciary duty claim, each premised on the defendant’s “bad faith” withholding of certain distributions to the LLC members. The Chancellor rejected the defendant’s attempt to dismiss the fiduciary duty claim as “duplicative” because, while the respective obligations may have overlapped, the defendant’s “knowing failure to honor Plaintiffs’ interests above his own” was not “solely a creature of contract,” but instead was “the sort of above-and-beyond bad faith that extends Plaintiffs’ fiduciary duty claim past the ‘common nucleus of operative facts’ that form the basis of their contract claim.” *Id.* at *12-13 (quoting *Nemec*, 991 A.2d at 1129).¹⁰

Indeed, this Court recently rejected the very argument made by Defendant, and accepted by the Order, in *Backer v. Palisades Growth Cap. II, L.P.*, 246 A.3d 81 (Del. 2021). There, this Court, applying *Nemec*, upheld the lower court’s decision to grant equitable relief invalidating certain board meeting votes – as relief under the plaintiff’s fiduciary duty claim – even though the at-issue votes were directly addressed by a voting agreement. *Id.* at 108-10. The Court held that, although “[t]he subject matter of the voting agreement may have overlapped with the [defendants’]

¹⁰ Courts in other jurisdictions have interpreted *Nemec* as not requiring dismissal where the fiduciary claim arises from distinct non-contractual duties. *See Clinton v. Aspinwall*, 352 Conn. 597, 631 n.3 (Conn. 2025) (concurrence) (*Nemec* does not preclude claim “that overlaps with a contract claim” where it “implicates distinct legal principles”); *Colaco v. Cavotec SA*, 25 Cal. App. 5th 1172, 1199-200 (Cal. Ct. App. 2018) (*Nemec* did not bar claim because “an independent basis for the breach of fiduciary duty claim existed apart from any contractual claim”).

inequitable conduct,” the plaintiff’s claim arose independently from fiduciary duties violated by the defendants – specifically, the “deceptive conduct in their capacities as directors” that ultimately led to those votes. *Id.* at 109.

“Put differently, the question is whether the plaintiff could bring an independent cause of action for breach of fiduciary duty if the parties had not signed a contract.” *Metro Storage Int’l LLC v. Harron*, 275 A.3d 810, 858 (Del. Ch. 2022). As such, if the plaintiff’s claim “inherently arise[s] under [the fiduciary’s] duty of loyalty,” and is not “solely a creature” of some contract, then the claim survives. *PT China LLC v. PT Korea LLC*, 2010 WL 761145, at *7 (Del. Ch. Feb. 26, 2010); *see In re Green Field Energy Servs., Inc.*, 2015 WL 5146161, at *11 (Bankr. D. Del. Aug. 31, 2015) (claim not “duplicative” because it “raise[d] considerations beyond pure breach of contract, including self-dealing, fairness and good faith”).¹¹ That is

¹¹ The cases cited in the Order (at 10) do not direct a different a result. In *Borsody v. Gibson*, 2025 WL 1650395 (Del. Ch. June 11, 2025), the claim was simply that the defendants “failed to cause the company to honor its contractual commitments” – specifically, a stock option agreement that the plaintiff claimed entitled him to exercise his options. *Id.* at *6. Here, though, Plaintiff’s claim has nothing to do with the RRA. The Order also relied on *In re Columbia Pipeline Grp., Inc. Merger Litig.*, 316 A.3d 359 (Del. Ch. 2024), *rev’d*, 342 A.3d 324 (Del. 2025), which was reversed and addressed a separate and irrelevant question of whether fiduciary duties can “override” and “set aside a contract.” *Id.* at 395. Moreover, the Court’s (V.C. Laster) comment – made in dicta in a footnote – that “contractual preemption has the upper hand” over cases permitting fiduciary duty claims where they arise from independent principles, *see id.* at 395 n.122, is unsupported *Nemec* and the weight of the case law. (*Supra* at 29-34.) It is also qualified by V.C. Laster’s subsequent recognition, in *Ban*, that even where fiduciary duty claims are premised on obligations addressed by contract, such claims still survive where – as here – the

plainly the case here.

The Chancery Court’s decision finding that Plaintiff’s right to sell his Shares is rooted in contract (*i.e.*, the RRA) is inconsistent with bedrock Delaware law. “The power of disposing of stock, like the power of disposing of any other property, is a common right and necessarily attaches to ownership,” such that “[i]n the absence of statutory, charter, bylaw, or contractual provisions to the contrary, the owner of corporate stock has an absolute right to transfer his or her stock.” 18A Am. Jur. 2d Corporations § 562. In fact, it is well-established in common law, and codified in statute, that “[i]nherent in the ownership” of “stock[] is the right to transfer or alienate that interest at the owner’s election and to the owner’s benefit.” *Forman v. CentriflyHealth, Inc.*, 2019 WL 1810947, at *10 (Del. Ch. Apr. 25, 2019); *see* 8 Del. C. § 159 (shares of stock are “personal property and transferable”); *see In re Sears Hometown & Outlet Stores, Inc. S’holder Litig.*, 309 A.3d 474, 507 (Del. Ch. 2024) (“The three most familiar [stockholder rights] are the rights to sell, vote, and sue.”). Absent a lawful restriction on Plaintiff’s right to sell the Shares, *see* 8 Del. C. § 202 (enumerating conditions that must be satisfied to restrict the transferability of shares), Plaintiff held an absolute right to sell them simply by virtue of his ownership and *not* the RRA.

fiduciary had “discretion” in exercising contractual obligations. 339 A.3d at 72; (*see infra* at 37-39).

Defendant inarguably had a fiduciary duty not to interfere with Plaintiff's fundamental right to sell his Shares. *See Parfi Holding AB v. Mirror Image Internet, Inc.*, 817 A.2d 149, 158 (Del. 2002) (fiduciary duty "to safeguard the minority stockholders' investment against dilution," "are beyond the contract and rest on an independent set of rights"); *Bray v. Oklahoma Pub. Co.*, 1991 WL 189136, at *1, 3 (Del. Ch. Sept. 24, 1991) (claim premised on "discriminatory plan" to impose "unreasonable" stock transfer restrictions was "meritorious"); *see also Oliver v. Bos. Univ.*, 2000 WL 1091480, at *7 (Del. Ch. July 18, 2000) (directors' actions that "resulted in dilution of plaintiffs' interests" in company breached duty of loyalty); *Rhodes v. SilkRoad Equity, LLC*, 2007 WL 2058736, at *5 (Del. Ch. July 11, 2007) (claim premised on "efforts to drive [minority shareholders] out"). Indeed, "fiduciary conduct motivated by an actual intent to do harm," as Defendant undertook here, "constitutes classic, quintessential bad faith [that is] so well accepted in the liturgy of fiduciary law." *In re Walt Disney Co. Derivative Litig.*, 906 A.2d 27, 64 (Del. 2006).

Moreover, even beyond Defendant's efforts to prevent Plaintiff specifically from selling the Shares, Plaintiff (like all stockholders) still maintained a right to be treated equally – a right Defendant violated by permitting himself and other stockholders to sell, while at the same time restricting Plaintiff from selling the exact same class of shares. (*See* A41-42 ¶ 86); *Tooley v. AXA Fin., Inc.*, 2005 WL

1252378, at *5 (Del. Ch. May 13, 2005) (“plaintiffs’ claim arises from the [] board’s duty not to treat one stockholder more generously at the expense of another stockholder”). It is well-established that, while fiduciaries are “not required in all circumstances to treat stockholders equally,” they may only engage in disparate treatment “when justified by a proper corporate purpose,” and in all events, “there is always a fiduciary duty to treat all stockholders fairly.” *Metro. Life Ins. Co. v. Aramark Corp.*, 1998 WL 34302067, at *1 (Del. Ch. Feb. 5, 1998). There was no “proper corporate purpose” for Defendant to unlawfully restrict certain stockholders’ shares while selling his own shares freely, and nor does doing so amount to fair treatment.

As such, Plaintiff’s claim is premised on duties entirely independent of the RRA, which the Complaint does not mention once because Plaintiff’s claim does not depend on it. Just as in *Backer*, where this Court sustained a claim premised independently on violated fiduciary duties that overlapped with and resulted in the breach of a contract, 246 A.3d at 108-10, Plaintiff’s claim arises from Defendant’s efforts to employ an improper scheme that implicates duties independent of (and well beyond) the RRA.

“[T]he fact that [Plaintiff’s] shares were governed by contracts ... does not eliminate the fiduciary duties ... to act loyally to all [] stockholders,” including to Plaintiff. *Lee v. Pincus*, 2014 WL 6066108, at *1, 9 (Del. Ch. Nov. 14, 2014)

(rejecting argument that plaintiff's claim, premised on directors employing in "discriminatory manner certain contractual restrictions" preventing certain stockholders from selling stock, was based in contract; "this is quintessentially a fiduciary duty claim"). Independent of the RRA, Plaintiff held a fundamental right to sell the Shares and to not suffer the intentional and discriminatory interference of that right for Defendant's personal gain.

2. Plaintiff's Claim Also Survives Because it is Premised on Defendant's Improper Use of Discretion Conferred Under the RRA.

Separately, Plaintiff's claim survives because, even if the RRA "explicitly addressed" Mondee's obligations with respect to the Shares' transferability, that agreement granted Mondee discretion that, as Plaintiff alleges, Defendant wrongfully employed in violation of his fiduciary duties.

As explained in *Ban*:

The *Nemec* principle makes sense where parties have agreed specifically on a particular outcome and memorialized that outcome by contract. There are good reasons to question whether contractual preemption applies when a fiduciary has discretion about whether to exercise a contract right and how to apply it. In that setting, the discretionary decisions remain fiduciary in character. A counterparty may both challenge compliance with the contract and, if the counterparty is the fiduciary's beneficiary, challenge the fiduciary act.

339 A.3d at 71-72. In other words, if a contract permits a company discretion in carrying out its obligations, the shareholder can assert a fiduciary duty claim premised on the fiduciary's use of that discretion. See *Frederick Hsu Living Tr. v.*

ODN Holding Corp., 2017 WL 1437308, at *24 (Del. Ch. Apr. 14, 2017) (“that a corporation is bound by its valid contractual obligations does not mean that a board does not owe fiduciary duties when considering how to handle those contractual obligations”).

Here, the Chancery Court’s finding that Mondee’s duties to Plaintiff arose from the RRA was based primarily on Section 3.1.16, which simply required Mondee to, “in good faith, cooperate reasonably with” Plaintiff. Absent any direction as to what that cooperation entailed beyond issues “in connection with [the] Registration” of shares (*supra* at 25) – the RRA conferred considerable discretion on Mondee. *See Meyers v. Zimmer Biomet Holdings, Inc.*, 2026 WL 1194997, at *1 (Del. Ch. May 1, 2026) (merger agreement’s “commercially reasonable efforts” clause relating to earn-out conferred acquirer “discretion to direct and control” business).

Accordingly, Plaintiff’s claim can equally be premised on Defendant causing Mondee to exercise the discretion conferred under Section 3.1.16 in such a way that improperly prevented Plaintiff from selling his Shares. *See Ban*, 339 A.3d at 72 (claim survived as premised on defendant having “caused [company] to make a discretionary decision” in setting price at which company would “exercise the [] Redemption Right” provided under LLC agreement); *Blaustein v. Lord Baltimore Cap. Corp.*, 2013 WL 1810956, at *13 (Del. Ch. Apr. 30, 2013) (contractual

provision addressing company's repurchase of stockholder's shares, but conferring discretion in approving it, did not foreclose fiduciary-duty claim premised on unfair rejection of repurchase proposal because provision "does not create a specifically defined contractual right").

III. THE CHANCERY COURT IMPROPERLY TOOK JUDICIAL NOTICE OF THE NEW YORK COMPLAINTS.

A. Question Presented

Whether the Chancery Court erred in taking judicial notice of the New York Complaints for purposes of determining whether Plaintiff’s claim for breach of fiduciary duty is preempted by the RRA. (*See* A11; A223-25.)

B. Scope of Review

The Supreme Court “reviews a decision to grant a motion to dismiss under Rule 12(b)(6) *de novo* ‘to determine whether the trial judge erred as a matter of law in formulating or applying legal precepts.’” *Country Life Homes, LLC v. Gellert Scali Busenkell & Brown, LLC*, 259 A.3d 55, 59 (Del. 2021) (citation omitted).

C. Merits of Argument

In support of his argument that Plaintiff’s claim is precluded by Mondee’s RRA obligations, Defendant submitted, purportedly as subject to judicial notice, two complaints that had been filed in prior proceedings against Mondee in New York federal and state court. (A78-100; A104-33.) In doing so, Defendant, in his opening brief, expressly cited to “factual allegations” in those complaints – specifically, paragraphs of Plaintiff’s breach-of-contract causes of action that asserted that Mondee “breached the Registration Rights Agreement” in connection with the maintenance of the Restrictive Legends on Plaintiff’s Shares. (A64 at nn.6-7 (citing A97-98 ¶ 108, A124 ¶ 88).) In the Order, the Court expressly relied upon those

complaint paragraphs in analyzing the extent of Mondee’s “contractual obligation” under the RRA and, as a basis for doing so, took “judicial notice of the fact of these public filings in a sister court.” (A11.) That was erroneous.

“The Delaware Supreme Court [] has urged that the [judicial notice] doctrine ‘be used with caution,’” and it is well-established that “the court may not take judicial notice of the truth of the contents of matters outside the pleadings.” *Totta v. CCSB Fin. Corp.*, 2021 WL 4892218, at *2 (Del. Ch. Oct. 20, 2021) (citing *Fawcett v. State*, 697 A.2d 385, 388 (Del. 1997)). Consistent with this limitation, courts do not judicially notice specific allegations made in other courts. *See In re Rural Metro Corp. S’holders Litig.*, 2013 WL 6634009, at *9 (Del. Ch. Dec. 17, 2013) (“judicial notice [is not] a license to credit the contents of filings in other courts”); *State v. Arbolay*, 2023 WL 7342134, at *3 (Del. Super. Ct. Nov. 7, 2023) (declining to judicially notice “allegations in [plaintiff’s] federal lawsuit because they have not been found by any trier of fact to exist”), *aff’d*, 320 A.3d 267 (Del. 2024).

Indeed, this Court has held that courts may not take judicial notice even of “factual findings” made by sister courts. *See Lebanon Cnty. Emps’ Ret. Fund v. Collis*, 311 A.3d 773, 798-802 (Del. 2023) (Chancery Court, in considering factual findings made by West Virginia court, committed “misapplication of judicial notice”).

The Chancery Court misapplied the judicial notice doctrine in considering the

New York Complaints. While it may have been authorized to judicially notice “the fact of these public filings” (A11), the Chancery Court did not limit its use of those filings to that purpose. Instead, it judicially noticed those complaints for far broader, and impermissible, purposes. In essence, the Chancery Court relies on Plaintiff’s previous *arguments* and *contract interpretations*, made in a foreign forum, that were never adjudicated on the merits, to support its conclusion that that Plaintiff’s claim for breach of fiduciary duty is governed, and ultimately preempted, by the RRA. (A11 (citing A97-98 ¶ 108 (complaint paragraph articulating contract claim), A124 ¶¶ 85-86 (same)).)¹²

The Chancery Court plainly relied on Plaintiff’s arguments, at the cited paragraphs of the New York Complaints, in making a factual determination as to the scope of Mondee’s RRA obligations. (See A11.) Indeed, immediately after determining it would “take judicial notice” of Plaintiff’s previous arguments addressing Section 3.1.16 of the RRA, the Chancery Court determined that “[t]hat *contractual obligation* preempts Plaintiff’s breach of fiduciary duty claim ...” (A11 (emphasis added).)

¹² That Plaintiff pled a contract claim alongside his fiduciary duty claim is unremarkable (even assuming *arguendo* that such claims are incompatible under Delaware law), as “a plaintiff may plead alternative, inconsistent theories” in New York. *Kerzhner v. G4S Gov’t Sols., Inc.*, 138 A.D.3d 564, 565 (N.Y. 1st Dep’t 2016); see *Farash v. Sykes Datatronics, Inc.*, 59 N.Y.2d 500, 504 (N.Y. 1983) (“pleading alternative theories of relief is accepted”).

The Chancery Court does not cite any authority supporting taking judicial notice of a party's previous allegations – addressing contract interpretation, made in a different forum, never reviewed by any court – for these purposes. The two decisions cited in the Order on this point are inapposite.

The first, *Hamilton Partners, L.P. v. Englard*, 11 A.3d 1180 (Del. Ch. 2010) (cited by Order at A11), took judicial notice of foreign pleadings solely in setting out the procedural history, and not for any substantive analysis. *See id.* at 1193-94. The second, *Wal-Mart Stores, Inc. v. AIG Life Ins. Co.*, 860 A.2d 312 (Del. 2004), in a footnote cites to a 1991 District of Delaware decision, *Southmark Prime Plus, L.P. v. Falzone*, 776 F. Supp. 888 (D. Del. 1991), which *Wal-Mart Stores* describes as “judicially notic[ing] contents of court records from another jurisdiction.” *Wal-Mart Stores*, 860 A.2d at n.28 (describing *Southmark Prime Plus*, 776 F. Supp. 888 at 891-92). But *Southmark Prime Plus* does not support the Chancery Court's use of judicial notice. The court there took judicial notice of the foreign court filings only for purposes of judicially estopping the plaintiffs from “chang[ing] a characterization of the facts in [the] case in order to later gain an advantage.” 776 F. Supp. 899. But there are no judicial estoppel issues in this case and, as such, *Southmark Prime Plus* (and by extension *Wal-Mart Stores*) is inapposite.¹³

¹³ “[J]udicial admissions apply only to admissions of fact, not to theories of law, such as contract interpretation,” and a party is only “barred from changing its position under the doctrine of judicial estoppel” if a court “rel[ied] ... on [the]

Accordingly, the Chancery Court impermissibly took judicial notice of the New York Complaints' for the truth of their contents. *See Collis*, 311 A.3d at 802, n.200 (reversing dismissal based on erroneous "misapplication of judicial notice" and citing decisions doing the same).

argument in a decision."!AT&T Corp. v. *Lillis*, 953 A.2d 241, 248 (Del. 2008) (quoting *Lillis v. AT&T Corp.*, 896 A.2d 871, 877 (Del. Ch. 2005)). Plaintiff has ever changed his position as to any facts, and no court ever reviewed Plaintiff's contract claims against Mondee, let alone relied on them

IV. THE CHANCERY COURT, ON REMAND, SHOULD BE DIRECTED TO FIND THAT THE COMPLAINT ALLEGES SUFFICIENT INVOLVEMENT BY DEFENDANT IN THE RESTRICTION OF PLAINTIFF’S SHARES TO PLEAD HIS CLAIM.

A. Question Presented

Whether the Complaint adequately alleges Defendant’s involvement in the improper restriction of Plaintiff’s shares, as necessary for Plaintiff to plead his claim.

(See A214-20.)

B. Scope of Review

The Supreme Court “may rule on an issue fairly presented to the trial court, even if it was not addressed by the trial court.” *Unitrin, Inc. v. Am. Gen. Corp.*, 651 A.2d 1361, 1390 (Del. 1995). The Court “reviews a motion to dismiss *de novo*.” *Stayton v. Clariant Corp.*, 10 A.3d 597, 600 (Del. 2010).

C. Merits of Argument

Although Defendant moved for dismissal on the separate ground that Plaintiff failed to sufficiently allege Defendant’s involvement in the restriction of Plaintiff’s Shares, as necessary to support his claim, the Court did not review that argument. This Court should reject that argument and, in the interest of judicial efficiency, direct the Chancery Court to do the same so that this case can proceed to discovery.

“The pleading standards governing the motion to dismiss stage of a proceeding in Delaware [] are minimal.” *Cent. Mortg. Co. v. Morgan Stanley Cap. Holdings LLC*, 27 A.3d 531, 536 (Del. 2011). Indeed, “all that is required is that the

Defendants have notice of the claims against them.” *BrandRep*, 2019 WL 117768, at *5 (citation omitted). Here, Plaintiff’s detailed allegations are more than enough to show that Defendant was singularly responsible for holding Plaintiff’s (and numerous other stockholders’) Mondee shares hostage by maintaining unlawful restrictive legends on them.

As an initial matter, Defendant was clearly aware of Plaintiff’s repeated requests to have the Restrictive Legends removed. Plaintiff directed his removal request to Defendant on two separate occasions (in late October and early November 2023). (A36-37 ¶¶ 64-65.) And, Defendant was the *only* person to contact Plaintiff once Mondee received a formal letter from Plaintiff’s counsel demanding the same. (A37 ¶ 67.) Moreover, the Complaint pleads Defendant’s scheme in detail.

First, the Complaint pleads that Defendant, more than any person at Mondee, was motivated to undertake, and stood to benefit from, a scheme to prevent stockholders from disposing of their shares in order to artificially inflate Mondee’s stock price. Defendant was at all times Mondee’s largest stockholder (*see* A19 ¶ 21; A39 ¶ 74) and, in June 2023 – three months after most stockholders redeemed their Legacy Mondee units for Mondee shares and the scheme began (A21 ¶ 27) – Defendant sold \$16,594,040 worth of Mondee stock through the Secondary Offering, by far the largest sale in that offering (A38-39 ¶ 72). Indeed, confirming Defendant’s fixation on preventing *others* from selling, Defendant expressly told

Vikas Prabhakar that he would not permit him to do so specifically because it risked lowering Mondee's stock price (A25 ¶ 41); and repeatedly pressured Mr. Okuno, after agreeing to remove the legends from his shares, not to sell them, even promising to compensate him with additional shares if he retained his shares and the stock price fell (A30-31 ¶ 51).

Second, Plaintiff pleads the contours of Defendant's scheme. Specifically, when Mondee shares were first distributed to stockholders in March 2023, most (if not all) of them were improperly encumbered by erroneous restrictive legends that prevented their sale, leading to numerous stockholder complaints. (A24 ¶¶ 37-38.) Mondee's corporate counsel, which immediately began to interface with Continental on Mondee's behalf (*see* A24-25 ¶ 39; A31-32 ¶ 54), initially indicated a policy that the legends, notwithstanding their unlawfulness, would only be removed from those stockholders who specifically requested such removal (*see* A24-25 ¶ 39). But, the practice that quickly took form was that Mondee would authorize the removal of erroneous legends only if two conditions were met: (1) the stockholder requested it, and (2) Defendant agreed to it. (A25 ¶ 40; *see* A25-31 ¶¶ 41-53.)

Third, the Complaint pleads that Defendant completely controlled and was the sole decision maker at Mondee concerning whether to maintain or remove legends on or from Mondee stockholders' shares. (*See* A31 ¶ 53.) This is established by the experiences of numerous victims of Defendant's scheme. (*See supra* at 15-

17.) For each of them, the decision to maintain or remove restrictive legends from their shares was made by Defendant, who was well understood to hold sole authority over that decision. This is sufficient to establish that the scheme was orchestrated by Defendant. *See Bay Ctr. Apartments Owner, LLC v. Emery Bay PKI, LLC*, 2009 WL 1124451, at *10 (Del. Ch. Apr. 20, 2009) (“at this stage [plaintiff] has created a reasonable inference that [defendant] used his control” in breaching fiduciary duty). The Complaint’s allegations, moreover, are sufficient to demonstrate that Defendant was also responsible for the maintenance of the Restrictive Legends on Plaintiff’s Shares. *See Alessi v. Beracha*, 849 A.2d 939, 943 (Del. Ch. 2004) (allegations “create an inference that the director defendants were involved, knowledgeable, or at least aware of the program”).

CONCLUSION

This Court should reverse the Chancery Court's decision dismissing Plaintiff's Complaint.

Dated: June 22, 2026

Respectfully submitted,

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