



IN THE SUPREME COURT OF THE STATE OF DELAWARE

MORTGAGE CONNECT
DOCUMENT SOLUTIONS, LLC, a
Delaware limited liability company,

Plaintiff-Below/Appellant,

v.

GREEN INDUSTRIAL
DEVELOPMENT GROUP, LLC, a
Delaware limited liability company,

Defendant-Below/Appellee.

No. 215, 2026

On appeal from the Superior Court
of the State of Delaware,

C.A. No. N23C-01-178 MAA CCLD

APPELLEE GREEN INDUSTRIAL DEVELOPMENT GROUP, LLC'S
ANSWERING BRIEF ON APPEAL

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NATURE OF PROCEEDINGS¹

As part of the proceedings below, the Superior Court considered motions and briefing on both an initial dismissal motion and subsequent cross motions for summary judgment. Upon hearing the latter, the Superior Court concluded it wanted to proceed to trial to assess witness credibility related to the question of whether the December 28 text constituted a repudiation of the lease in question, and it then presided over a three-day bench trial. The parties engaged in extensive post-trial briefing leading up to final arguments on July 10, 2025. After all of that, the Superior Court on January 20, 2026, issued a forty-five-page opinion (the “Opinion”) finding in favor of Green and against MCDS *on every liability issue*, and awarding Green damages, fees, costs, and interest. The Superior Court incorporated the findings of the opinion into a judgment signed on April 30, 2026.

The Opinion serves as a complete refutation of all that MCDS not only argues but also says in the opening brief. The opening brief presents MCDS’s version of the facts as though it were uncontested—as though the trial never happened. They are not, and it did. Every factual dispute that MCDS now characterizes as settled was actually litigated, considered, and resolved against MCDS. Three points bear

¹ Citations to “Opinion” and “Ex. A” refer to the Opinion, attached to the Opening Brief at Tab A. Citations to “Opening Brief” and “Op. Br.” refer to Appellant’s Opening Brief, Dkt. 9. Capitalized terms used in this brief have the meanings assigned to them by the Superior Court in its Opinion.

particular emphasis. First, the opening brief makes each of the points as if the Superior Court ignored or did not consider them below. Not so. In reality, each was thoroughly analyzed in the Opinion—and rejected. Second, the opening brief cites testimony from MCDS’s CEO, Jeff Coury, as established fact. Contemporaneous documentary evidence controverted that testimony, and the Opinion expressly found Mr. Coury not credible on multiple material issues, meaning that many of the “facts” the opening brief relies on are not facts at all—they are rejected testimony. Third, the Opinion clearly sets forth the legal standards under which the Superior Court decided the case—which are the same as the standards MCDS claims the Superior Court should have applied—and then reaches factual conclusions MCDS does not like. MCDS’s quarrel is with those factual findings, not the legal standards. As to those findings, *de novo* review does not apply.

As detailed more fully below, the opening brief contains nothing the Superior Court did not hear before—many times—and no reason exists to disturb the trial court’s scrupulous examination of the record, its factual conclusions therefrom, or its exacting review and interpretation of all pertinent documents. *MCDS lost on every factual predicate below*. Each of those findings deserves deference. MCDS cannot satisfy the clear error standard as to any of them.

SUMMARY OF ARGUMENT

1. **Denied.** This Court should affirm the judgment because evidence in the record supports the Superior Court’s conclusion that MCDS repudiated the Lease, the conclusion is the product of an orderly and logical deductive process, and the Superior Court correctly applied Colorado law on anticipatory repudiation. The December 28 Text was not merely a rejection of one proposal; it was the culmination of a three-month “Plan B” to “kill the deal,” and the Superior Court found—based on the text’s plain language, MCDS’s subsequent conduct, and the weight of the contemporaneous documentary evidence—that it communicated a definite and unequivocal intent not to perform. MCDS presented an alternative narrative at trial. The Superior Court rejected it. This Court reviews that factual determination for clear error (not *de novo* as MCDS suggests), and MCDS cannot satisfy that exacting standard.

2. **Denied.** MCDS’s argument that the Superior Court “disregarded its own fact findings” about the January 5, 2023, telephone call mischaracterizes the Opinion. The Superior Court expressly considered the post-December 28 conduct and found it confirmed—rather than negated—MCDS’s repudiatory intent. Coury’s sole substantive comment was to ask Green to return the deposit, signaling MCDS’s intent not to proceed; Coury’s colleague Steve Wilson—Coury’s colleague and MCDS’s contractually authorized representative under the Lease—cancelled a

crucial vault contract, a material and indispensable component to the overall buildout within the Premises, evidencing MCDS's intent not to move into the Premises; and MCDS's January 13 letter never attempted to walk back the repudiation or resume budget negotiations. The Superior Court's observation that it "perhaps" might have found differently had MCDS continued negotiating is a hypothetical the Superior Court itself rejected on the facts it found.

3. **Denied.** MCDS's contention that the Superior Court improperly relied on internal "Plan B" evidence is both waived and meritless. MCDS never objected at trial to the admission of the Plan B evidence or moved to exclude it on the ground that internal communications are categorically inadmissible in repudiation cases. Even on the merits, the Superior Court did not rely on the Plan B evidence as the sole or an independent basis for its repudiation finding, but as corroborating context confirming the meaning of the December 28 Text and MCDS's post-text conduct. The Superior Court's policy observation at pages 24–25 of the Opinion is best understood not as a freestanding legal ruling but as a common-sense observation that permitting MCDS's strategy would reward gamesmanship—a reading confirmed by the logical order of the Superior Court's Opinion, which announced its repudiation holding on independent grounds before reaching the policy discussion.

4. **Denied.** The Superior Court correctly held that Green had no obligation to comply with the Lease's notice-and-cure provisions because compliance would

have been futile given MCDS's unequivocal repudiation. Under *Highlands Ranch University Park, LLC v. Uno of Highlands Ranch, Inc.*, 129 P.3d 1020, 1024 (Colo. App. 2005), Colorado recognizes where a tenant has "clearly communicated its intent not to perform under the lease," compliance with notice-and-cure provisions "would have been futile acts." That is precisely what the Superior Court found here, and its finding is entitled to deference. Ex. A at 25.

5. **Denied.** This Court should reject MCDS's damages arguments. The Superior Court correctly interpreted Section 23.1(c) of the Lease to authorize recovery of lost rent as "consequential damages or other amount necessary to fully compensate Landlord for all loss or injury proximately caused by Tenant's default." Ex. A at 35–37. The Superior Court's reading gives effect to every word of the contractual scheme, harmonizes subsections (b) and (c), and comports with Colorado law on expectation damages. MCDS's contrary reading—which would limit Section 23.1(c) to incidental expenses only—renders the provision's broad compensatory language superfluous and contradicts the Lease's own definition of Fair Market Rental Value.

6. **Denied.** The Superior Court acted well within its discretion when it accepted Green's expert testimony on the Section 23.1(b) rate-variance calculation. Bill James, a licensed Denver real estate appraiser with decades of market experience, used a standard comparables methodology to determine fair market

value. The Superior Court credited James over MCDS's rebuttal expert, Farrell—a Chicago-based non-appraiser with no Denver market experience—and explained its reasoning. That credibility determination is unassailable on appeal.

STATEMENT OF FACTS

Green incorporates the Statement of Facts set forth in the Opinion (Ex. A at 1–12) and supplements it here to correct MCDS’s selective presentation and to highlight facts MCDS omits.

I. THE LEASE AND THE BUDGET PROCESS

In April 2022, MCDS and Green executed a commercial lease for 46,280 square feet of warehouse space at the JAG Logistics Center near Denver International Airport (the “Premises”). Ex. A at 3; A361. The Lease, governed by Colorado law, was Green’s standard form that Green’s counsel drafted. A113 at 27:15–20. The Lease incorporated a Work Letter providing MCDS with a Tenant Allowance of \$30 per square foot—approximately \$1.38 million—as a contribution towards the full cost of the buildout of the Premises for MCDS’s operational needs. Ex. A at 3; A387 § 5. Trial testimony demonstrated that, from inception of the Lease, Jeff Coury knew the full cost of the buildout was going to be greater than the Tenant Allowance. A133 at 108:12–109:4.

The Work Letter contemplated an iterative budget process: Green would prepare Working Drawings based on specific programming and design specifications provided by MCDS and budgets; if costs exceeded the Tenant Allowance (creating “Excess Cost”), MCDS could either accept the Excess Cost or work with Green to revise the plans to reduce or eliminate it, with the process

repeating until the Excess Cost was “eliminated or [MCDS] has agreed to” bear it. A387–88 § 5(b). Green acknowledged that MCDS was “not obligated under the Work Letter to consent to any Budget” containing Excess Cost. A434.

Between September and December 2022, the budget process unfolded. Green submitted multiple budget proposals, each containing millions of dollars in Excess Cost. Ex. A at 4–7. MCDS exercised its contractual right to reject those proposals. Green could not lower the budget any further due to the prevailing market costs associated with the specifications MCDS demanded, and never streamlined to result in a lower budget estimate. As a result, the parties could not reach an agreement on a budget for the working drawings to which they had agreed. *See id.* To avoid a permanent stalemate over the budgeting process, the Lease provides Green protection in the form of establishing a commencement date which includes the obligation on MCDS’s part to begin paying rent. Because the budgeting process in fact stalemated due to MCDS’s refusal to change the specifications, on October 19, 2022, Green established a commencement date of March 1, 2023. Ex. A at 9. The Superior Court noted that “Green put MCDS on the clock.”² *Id.* at 10.

² The Superior Court also observed the timing of the repudiation, emphasizing that MCDS’s Tenant Allowance was set to be forfeited in April 2023. Ex. A at 20, n.133.

II. MCDS'S "PLAN B" AND THE EVENTS LEADING TO THE DECEMBER 28 TEXT

What the trial record revealed—and what MCDS's Opening Brief assiduously avoids—is that while MCDS was exercising its contractual rights regarding budgets, MCDS's principal Jeff Coury was simultaneously orchestrating a plan to abandon the Lease. On October 4, 2022, the same day Green presented what it called a final budget to MCDS, Coury instructed his colleague Steve Wilson to “start working on plan B.” A093 at 198:7–18; A061 at 71:5–72:5; B1. Wilson responded: “Plan B, kill the deal put the new equipment in Argonne.” A061 at 72:16–22; B2. The Superior Court found that “MCDS was planning to ‘kill the deal’—repudiate the Lease—almost three months *before* the December 28 Text.” Ex. A at 22 (emphasis in original).

Days later, on October 7, 2022, Coury texted a colleague about the Lease: “no way am I doing this.” *Id.*; B9. He continued: “[T]he Lease is signed and we may have a fight with the landlord.” Ex. A at 22; B9. The following day, Coury texted the same colleague to ask about real estate counsel, noting that he “need[s] to be able to understand what litigation looks like.” Ex. A at 22; B17. Well aware of its upcoming obligation to begin paying rent, three months later MCDS obviously initiated suit to gain leverage at the outset of this dispute.

On October 7, 2022, Wilson told a Xerox employee that MCDS “*will not be moving plant locations.*” Ex. A at 22 (emphasis in original); B10. On November 7,

2022, Wilson communicated with the landlord of MCDS's existing Argonne Street facility about expanding there—consistent with “Plan B.” Ex. A at 22–23; B22.

Meanwhile, MCDS continued interacting with Green regarding the budget. On November 4, 2022, MCDS rejected Green's Fourth Budget (which still contained over \$4 million in Excess Cost) but expressly stated: **“by no means, the end to our conversations as we would like to continue to work cooperatively so we can see if [we] get to a budget number that works for [MCDS].”** B18.

The parties next spoke on December 5, 2022. Green did not propose a revised budget. Instead, Green offered MCDS a smaller space—a different idea intended to address MCDS's budgetary constraints (the “Smaller Space Proposal”). Ex. A at 11; B23–24.

III. THE DECEMBER 28 TEXT

On December 28, 2022, Coury sent Dan Green a text message that the Superior Court described as “the nexus of this lawsuit.” Ex. A at 11. The text stated:

Dan hope all is well and you are enjoying your vacation. I worked with my team and your latest proposal does not work. We cannot take the space. I wanted to get to you sooner than later so you can continue to market the space to others. This process, unfortunately has caused my business a lot of issues with operations with delays of equipment, capacity, and client boarding. We have no choice but to look at the other alternatives. Wish you the best. Jeff

Id.; B26.

The Superior Court parsed the text sentence by sentence and found that the final three sentences—particularly the declaration that MCDS would “look at the other alternatives”—communicated MCDS’s intent to abandon the Lease. Ex. A at 17–19; B26. The Superior Court noted that “[e]ven accepting that the ‘space’ and ‘latest proposal’ refer to the Smaller Space Proposal,” the second half of the text conveys MCDS’s repudiation. Ex. A at 18. The Superior Court did so by conducting an intensive analysis of each sentence and embedded phrase. Ex. A at 17–19; *see infra* § II.

IV. POST-DECEMBER 28 CONDUCT CONFIRMING REPUDIATION

On January 5, 2023, the parties spoke by telephone. Ex. A at 19; A074 at 124:6–7. The Superior Court found that during that call, “**Coury asked Dan Green to return MCDS’s Deposit**—clearly signaling intent not to proceed with the Lease.” Ex. A at 20; A127–28 at 84:8–85:13.

On January 11, 2023—*before* Green’s January 12 termination letter—Wilson cancelled a contract for the installation of a vault at the Lease Premises that would have been critical to its operations. Ex. A at 20; B27. The Superior Court found that “MCDS’s decision to cancel a third-party contract, which formed part of the buildout, further evidences their intent not to move into the Lease Premises.” Ex. A at 20; B27.

On January 12, 2023, Green sent MCDS a Notice of Default, Tenant Delay, and Termination of Lease. Ex. A at 12; A421–22. MCDS responded the next day through counsel. B32–33. MCDS’s January 13 letter did not walk back the repudiation or ask Green to resume budget negotiations. Instead, MCDS “again asked Green to return the Deposit.” Ex. A at 20; B33.

The Superior Court concluded: “Between the December 28 Text, MCDS’s January 13 Letter, the testimony regarding the January 5 phone call between Dan Green and Coury, and Wilson’s cancellation of the Vault Contract (which occurred *before* Green’s January 12 Letter terminating the Lease), the Superior Court is convinced MCDS intended to repudiate the Lease via the December 28 Text and maintained its intention of nonperformance after sending the text.” Ex. A at 21 (emphasis in original).

V. COURY’S CREDIBILITY

The Superior Court expressly found Coury’s testimony not credible on key points. By way of example, Coury “testified at trial that he was not instructing Wilson to kill the deal, but was rather ‘instructing him to focus on Plan B.’” Ex. A at 24 n.159. The Superior Court found that “[t]his contradicts the contemporaneous instructions of Coury to ‘kill the deal,’ and the Court will credit the contemporaneous evidence over litigation-based testimony.” *Id.* The Superior Court similarly found Coury’s testimony that repudiation made no financial sense was not credible,

concluding “economic logic is not dispositive in a contractual repudiation analysis”—the Superior Court may find repudiation “where the evidence supports repudiation, even if repudiation was not an efficient breach.” Ex. A at 23 (citing *Lawry v. Palm*, 192 P.3d 550, 559–60 (Colo. App. 2008)). The Superior Court repeatedly discredited Coury’s testimony at other major disputed facts, such as Coury’s reading of the December 28 Text and what transpired on the January 5, 2023 telephone call. Ex. A at 17–20; *see supra* § I.C.6.iv.

ARGUMENT

I. THE SUPERIOR COURT PROPERLY FOLLOWED COLORADO LAW AND ITS FACTUAL FINDINGS ARE NOT CLEARLY ERRONEOUS

A. Questions Presented

1. Whether the Superior Court’s factual finding that MCDS repudiated the Lease was supported by evidence in the record.
2. Whether the Superior Court correctly found that MCDS did not continue to try and work with Green after the December 28 repudiation text.
3. Whether the Superior Court was entitled to rely on MCDS’s internal communications to determine whether MCDS repudiated the Lease.
4. Whether the Superior Court “disregarded the plain language of the Lease” in finding that MCDS breached the Lease despite Green failing to give MCDS a notice and cure period.

B. Scope of Review

The Superior Court found that MCDS repudiated the lease. Ex. A at 25. The finding is, at most, a mixed question of fact and law, and the factual predicates underlying it—*every one of which the Superior Court resolved against MCDS*—this Court reviews only for clear error. *UbiquiTel Inc. v. Sprint Corp.*, 2005 WL 3533697, at *7 (Del. Ch. Dec. 14, 2005) (“Whether in this case there has been an absolute and unequivocal refusal or there was a distinct and positive inability to perform constitutes a mixed question of fact and law”). MCDS characterizes

the Superior Court’s repudiation finding—the crux of this case—as presenting a pure question of law subject to *de novo* review. It is not.

Factual findings from bench trials are reviewed for clear error. *Coster v. UIP Cos., Inc.*, 300 A.3d 656, 663–64 (Del. 2023); *see also Delmarsh, LLC v. Env’t. Appeals Bd.*, 277 A.3d 281, 290 (Del. 2022) (findings are reviewed for clear error when the issue is a mixed question of law and fact). A trial court’s findings are not clearly erroneous if they are “sufficiently supported by the record and are the product of an orderly and logical deductive process.” *Bäcker v. Palisades Growth Cap. II, L.P.*, 246 A.3d 81, 95 (Del. 2021) (quoting *Biolase, Inc. v. Oracle P’rs, L.P.*, 97 A.3d 1029, 1035 (Del. 2014)). The Delaware Supreme Court “will set aside a trial court’s factual findings only ‘if they are clearly wrong and the doing of justice requires their overturn.’” *Coster*, 300 A.3d at 663. “When there are two permissible views of the evidence, the factfinder’s choice between them cannot be clearly erroneous.” *Id.* at 663–64 (citation omitted); *see also DV Realty Advisors LLC v. Policemen’s Annuity & Benefit Fund of Chi.*, 75 A.3d 101, 108 (Del. 2013).

This Court reviews conclusions of law *de novo*. *Coster*, 300 A.3d at 663–64; *In re Viking Pump, Inc.*, 148 A.3d 633, 656 (Del. 2016).

For mixed questions of fact and law the factual determinations are reviewed for clear error, but the legal conclusions drawn from those facts are reviewed *de novo*. *In re Mindbody, Inc., S’holder Litig.*, 332 A.3d 349, 386 (Del. 2024); *Burrell*

v. State, 953 A.2d 957, 960 (Del. 2008). The applicable standards of appellate review for mixed questions of law and fact are well established:

After a trial, findings of historical fact are subject to the deferential ‘clearly erroneous’ standard of review. That deferential standard applies not only to historical facts that are based upon credibility determinations but also to findings of historical fact that are based on physical or documentary evidence or inferences from other facts. Where there are two permissible views of the evidence, the factfinder’s choice between them cannot be clearly erroneous. When factual findings are based on determinations regarding the credibility of witnesses, the deference already required by the clearly erroneous standard of appellate review is enhanced.

CDX Hldgs., Inc. v. Fox, 141 A.3d 1037, 1041 (Del. 2016).

C. Merits of the Argument

Here, the Superior Court’s repudiation finding—which required the Superior Court to determine the meaning of a text message—is at most a mixed question of fact and law.

1. The Superior Court correctly applied Colorado law.

The legal definition of repudiation under Colorado law—a “definite and unequivocal manifestation” of intent not to perform—is not in dispute. Ex. A at 17 (quoting *Highlands Ranch Univ. Park*, 129 P.3d at 1023). What the Superior Court determined is *what the December 28 Text meant* in context, informed by the testimony of the parties, the contemporaneous documentary record, and the post-text conduct. See Ex. A at 25 (“Coury’s December 28 Text repudiated the Lease.”). That is a factual determination. The Superior Court’s sentence-by-sentence parsing of the

text, its assessment of Coury’s credibility (which it found lacking), its weighing of the post-December 28 conduct against the text’s language, and its crediting of the contemporaneous documentary evidence over Coury’s trial testimony are all quintessential fact-finding to which this Court must defer. *See CDX Hldgs.*, 141 A.3d at 1041; *see CitiSteel USA, Inc. v. Connell Ltd. P’ship*, 758 A.2d 928, 930–31 (Del. 2000) (confirming the inherently mixed nature of a repudiation determination by holding that the question of whether a party’s letter constituted a repudiation was “properly submitted to the jury,” because the letter could be “interpreted in either of two ways”); Ex. A at 15–25.

On each of those factual determinations, the Superior Court found against MCDS. *Id.* MCDS’s opening brief simply ignores that it lost those factual battles and presents its rejected version of events as though it were undisputed. Op. Br. at 17–21.

Further, MCDS’s reliance on *Caribbean Sun Airlines Inc. v. Halevi Enterprises LLC*, 339 A.3d 24, 34 (Del. 2025), is misplaced. Op. Br. at 16. *Caribbean Sun* distinguishes between deference to factual findings and *de novo* review of “formulation and application of legal principles.” *Caribbean*, 339 A.3d at 34 (emphasis added). But the Superior Court did not misformulate or misapply the legal standard—it correctly recited the Colorado law requirement of a “definite and unequivocal manifestation.” Ex. A at 17. That is undisputed. *See* Op. Br. at 17.

MCDS's quarrel is with the Superior Court's factual determinations, which the Superior Court applied to the correct legal standard. Those factual determinations are entitled to deference. *Caribbean Sun Airlines*, 339 A.3d at 34 (reiterating the Supreme Court of Delaware "will not set aside a trial court's factual findings unless they are 'clearly erroneous'").

2. The Superior Court correctly found that the December 28 text constituted repudiation.

MCDS's principal argument on appeal—that the December 28 Text was merely a rejection of the Smaller Space Proposal, not a repudiation of the Lease—was fully considered and rejected by the Superior Court after hearing live testimony and reviewing the voluminous documentary record. *See* Ex. A at 15–16 ("According to MCDS, the December 28 Text instead rejected the Smaller Space Proposal, as taking the full Premises of the Lease was no longer an option on the table, having been 'committed' to another tenant."). MCDS presented that exact argument at trial. *See, e.g.*, A073 at 119:4–19. The Superior Court did not overlook it; the Superior Court rejected it. MCDS cannot demonstrate clear error.

a. The Superior Court's Textual Analysis Was Sound.

The Superior Court did not, as MCDS contends, find repudiation in an "ambiguous" message. Op. Br. at 18. MCDS argued ambiguity at trial. A357 at 119:11–16 ("But, in any event, the significance of it, even if you accept it, is that Dan Green had different understandings. That shows ambiguity. Under Colorado

law if there is ambiguity, there is not a repudiation as a matter of law.”). The Superior Court disagreed. It carefully analyzed the December 28 Text and found that while the first portion discussed the Smaller Space Proposal, the last three sentences communicated something far broader. Ex. A at 17–19. The Superior Court found that the third-to-last sentence—“This process, unfortunately has caused my business a lot of issues”—“refers to the entire budgeting process” that had lasted over a year to that point and not merely the Smaller Space Proposal, which “was on the table less than a month.” Ex. A at 18. The second-to-last sentence— “We have no choice but to look at the other alternatives”— “provides the most damaging evidence supporting repudiation.” Ex. A at 19. And the closing “Wish you the best. Jeff” “signaled a final end to the parties’ contract.” Ex. A at 18–19. Those are factual findings, and each went against MCDS.

The record supports this textual analysis. The parties did not dispute that the December 28 Text was the only written communication the parties exchanged between December 5, 2022 and January 5, 2023. *See* A296 (“When the parties spoke on January 5—their first discussion after the December 28 Text—no one mentioned repudiation.”); B67–68 (“On January 5, 2023, Coury—for the first time since sending the December 28 Text—called Green and asked for a return of his security deposit.”). The parties did not dispute that the Smaller Space Proposal was the only proposal on the table at the time. A255 (“It is also undisputed the Smaller Space

Proposal was the only proposal being discussed by the parties at the time.”); B78 (“Coury testified that—in his view—Green had no space other than the Smaller Space Proposal available to MCDS when he sent the December 28 Text.”). And the parties did not dispute that the December 28 Text’s reference to “this process” encompassed a budgeting dispute stretching back months—not a proposal that had existed for barely three weeks. A074 at 121:3–16; B77 (“It simply makes no sense that Coury would include this sentence about issues related to the process—as a whole—if he was actually only rejecting the Smaller Space Proposal.”).

Moreover, the Superior Court correctly distinguished this case from *Quinn v. City of Evans Police Department*, 2009 WL 2241955 (D. Colo. July 24, 2009), upon which MCDS relies. Ex. A at 23–24. In *Quinn*, the allegedly repudiating message used “uncertain terms” (“I’m not sure where that leaves us”), was “far more ambiguous,” contained “conditional language,” and ended with “a request that the recipient call back.” Ex. A at 23–24; *Quinn*, 2009 WL 2241955, at *5. Coury’s December 28 Text contains none of those hallmarks—no conditional language, no invitation to continue discussions, no uncertainty. B26. Instead, it wishes Green “the best” in a valedictory that the trial court was fully entitled to interpret as a farewell. Ex. A at 24; B26.

b. The Post-December 28 Conduct Confirmed the Repudiation.

MCDS argues that the January 5, 2023, telephone call shows MCDS was willing to continue negotiating, and that the Superior Court “disregarded its fact findings” by treating that call as consistent with repudiation. Op. Br. at 22. That argument distorts the Opinion. The Superior Court did not disregard MCDS’s evidence about the January 5 call—the Superior Court considered it, weighed it against the totality of the record, and found it unpersuasive. Ex. A at 19–20.

The Superior Court found that during the January 5 call, Coury “reiterated the inadequacy of the Smaller Space Proposal” and “asked Dan Green to return MCDS’s Deposit, clearly signaling intent not to proceed with the Lease.” Ex. A at 20; A127–28 at 84:8–85:13. The Superior Court acknowledged that, under Colorado law, a repudiating message paired with “continued efforts to negotiate a budget” might negate a finding of repudiation. Ex. A at 19 (citing *Lawry*, 192 P.3d at 556). But the Superior Court found the opposite occurred here: rather than continuing to negotiate, MCDS asked for its money back, cancelled construction contracts, and ultimately sent a January 13 letter that “did not walk back the repudiation, or ask Green to resume Budget negotiations. Instead, MCDS again asked Green to return the Deposit.” Ex. A at 20.

MCDS’s suggestion that Coury’s expression of continued willingness to negotiate on January 5 disproves repudiation ignores a critical point: the Superior

Court heard that evidence and rejected it. Ex. A at 21 (“Between the December 28 Text, MCDS’s January 13 Letter, the testimony regarding the January 5 phone call between Dan Green and Coury, and Wilson’s cancellation of the Vault Contract . . . the Court is convinced MCDS intended to repudiate the Lease via the December 28 Text and maintained its intention of nonperformance after sending the text.”). The Superior Court weighed Coury’s testimony against the totality of the record and credited the documentary evidence over Coury’s self-serving characterization. Ex. A at 21–23. The Superior Court found—as it was entitled to do—that Coury’s statement that “the Excess Costs to be reduced before MCDS could agree to the budget” (Ex. A at 20) was not a genuine negotiating posture but rather a pretext, given that Green had previously told Coury no further reduction was possible unless the specifications were changed and Coury called for the sole purpose to ask for a return of the deposit. That is a credibility determination. The Superior Court made it. It went against MCDS. The Superior Court’s evaluation of post-text conduct is a factual determination squarely within its province. *See Lawry*, 192 P.3d at 559 (treating post-message conduct as evidentiary inquiry into intent).

3. MCDS’s “Plan B” Argument Is Waived and, in Any Event, Meritless.

MCDS contends that the Superior Court improperly relied on MCDS’s internal “Plan B” communications. Op. Br. at 25. That argument fails for two independent reasons.

First, MCDS waived the argument. At post-trial oral argument on July 10, 2025, the Superior Court directly asked MCDS’s counsel whether it could consider evidence beyond the December 28 Text to discern Coury’s intent. A330 at 11:9–11. MCDS’s counsel unequivocally invited the Superior Court to do exactly that:

9	THE COURT: Should I look at other
10	evidence, or should I not look at other
11	evidence as to what this text means?
12	MR. SOMMER: Well, since the task
13	before you, Your Honor, is to distill the
14	intention of Mr. Coury, that is what the law
15	says, I think all of the evidence is relevant
16	for that purpose.
17	I think certainly it is our position
18	that the words are clear and unambiguous. But
19	as you are distilling intent, I think all of
20	the other evidence is relevant.]
21	So this is what Dan Green writes to
22	Jeff on the 12th of December:

A330 at 11:9–20. MCDS cannot now argue that the Superior Court erred by relying on that very evidence. Further, MCDS never objected at trial to the admission of the Plan B evidence. The “kill the deal” email (B2), the Wilson-Coury “Plan B” communications (B2; B9; B10; B17), and Coury’s own trial testimony about those messages all came into evidence without objection. *See, e.g.*, A061–62 at 71:13–72:15 (testifying about “Plan B” email); 72:16–73:10 (testifying about “kill the deal”

email). MCDS cannot now, for the first time on appeal, challenge the propriety of the Superior Court’s reliance on evidence that MCDS itself asked the Superior Court to consider, and wholesale failed to raise any challenge to below. *In re Oracle Corp. Deriv. Litig.*, 339 A.3d 1, 17–18 (Del. 2025) (“[P]laintiff[] did not directly raise the argument” with the trial court and therefore “[i]t is waived on appeal.”); *City of Wilm. v. Flamer*, 2013 WL 4829585, at *6 (Del. Super. Ct. May 22, 2013) (“A party that does not object to admission of evidence at trial is deemed to have waived such objection for the purposes of an appeal.”).

Not only did MCDS fail to raise the issue at trial, but it actually *consented* to and *encouraged* the Superior Court to use that exact evidence when deciphering the meaning behind the December 28 Text. A330 at 11:9–20. That is textbook waiver.

Second, the argument is meritless. Even on the merits, the Superior Court did not rely on the Plan B evidence as the sole or independent basis for its repudiation finding. The Superior Court’s analysis proceeded in a clear logical deductive sequence: (1) it analyzed the December 28 Text itself (Ex. A at 17–19); (2) it considered post-December 28 conduct (Ex. A at 19–20); (3) it announced its conclusion that MCDS “intended to repudiate the Lease via the December 28 Text and maintained its intention of nonperformance after sending the text” (Ex. A at 21); and only then (4) it discussed the Plan B evidence as additional context confirming

MCDS’s “months-old intention not to perform the Lease” (Ex. A at 21–22). The Plan B evidence was corroborative, not dispositive.

MCDS’s argument that a court must determine repudiation solely from communications “between the contractual parties” conflates two distinct principles. Op. Br. at 25. The principle MCDS cites that repudiation is judged by “the intention manifested by [a party’s] acts and words” (*J.B. Service Court v. Wharton*, 632 P.2d 943, 945 (Wyo. 1981)) means that a *secret, uncommunicated change of heart* cannot constitute repudiation. It does not mean that a trial court, having found repudiation in a party’s communicated words and acts, may not also consider the party’s internal documents as corroborating evidence of what those communications meant. *See Lawry*, 192 P.3d at 558–59; *see also Johnson v. Benson*, 725 P.2d 21, 25 (Colo. App. 1986). The December 28 Text *was* communicated to Green. B26. The Plan B evidence confirms what it meant.

4. The “Policy” Passage Does Not Reflect Legal Error.

MCDS seizes upon the Superior Court’s observation that “[a]s a policy matter, a finding against repudiation is unsavory” (Ex. A at 24) as evidence of legal error. Op. Br. at 25. Read in context, that passage is not a freestanding legal ruling or the application of some novel “policy” test. *See* Ex. A at 24. The Superior Court specifically included that statement as a common-sense observation about the consequences of accepting MCDS’s position—that a party could orchestrate a three-

month plan to kill a deal, send a valedictory text, and then use the other party's reasonable reliance on that text as a sword to extract damages for improper termination. Ex. A at 24.

The structure of the Opinion confirms that reading. The Superior Court announced its repudiation holding at page 21 (“the Court is convinced MCDS intended to repudiate the Lease via the December 28 Text”), confirmed it at page 23 (“the evidence shows MCDS intended to repudiate the Lease and did so via the December 28 Text”), analyzed and distinguished the present facts from a case MCDS relied on (unlike *Quinn*, “Coury’s December 28 Text contains no conditional language”), *before* reaching the policy observation at pages 24–25. Ex. A at 21–25. MCDS’s reliance on the policy passage as a basis for error is a red herring. Indeed, the Opinion makes clear that its policy observation was merely a *response* to MCDS’s argument that repudiation was economically irrational—not an independent basis for the holding. Ex. A at 24. Even if this Court were to disagree with the trial court’s policy observation, that would not undermine the independently sufficient bases for the repudiation finding.

5. Green was excused from compliance with notice-and-cure provisions.

MCDS argues that the Lease’s notice-and-cure provision in Section 22.3 required Green to give MCDS thirty days’ written notice before terminating the Lease and that Green’s failure to do so precludes any finding of breach. Op. Br. at

28–30. The Superior Court considered and correctly rejected that argument, specifically finding that “[b]ecause MCDS repudiated the Lease, Green was not required to follow the notice and opportunity to cure provisions of the Lease—it had the right to terminate via the January 12, 2023, letter.” Ex. A at 25.

Under Colorado law, notice-and-cure provisions become inapplicable when compliance would be “futile” due to repudiation because the tenant has clearly communicated its intent not to perform. *Highlands Ranch Univ. Park, LLC*, 129 P.3d at 1024 (“Here, tenant clearly communicated its intent not to perform under the lease, and thus landlord’s compliance with the lease provisions requiring notice and opportunity to cure would have been futile acts.”). The Superior Court expressly relied on *Highlands* and found that MCDS’s conduct met the same standard “[b]ecause MCDS repudiated the Lease.” Ex. A at 25 & n.162.

MCDS attempts to distinguish *Highlands* on the ground that the tenant there “repeatedly conceded” it would not perform, while MCDS claims it expressed willingness to negotiate during the January 5 call. Op. Br. at 30. The Superior Court considered the contradicting testimony from Green and Coury about what transpired on the January 5 call and found that, during that call, “Coury asked Dan Green to return MCDS’s [Security] Deposit, clearly signaling intent not to proceed with the Lease.” Ex. A at 19–20. The Superior Court did not credit Coury’s testimony that MCDS had signaled it was willing to negotiate, and explicitly stated in the Opinion

that the Superior Court was “convinced MCDS intended to repudiate the Lease via the December 28 Text” based on MCDS’s conduct *as a whole*—“the December 28 Text, MCDS’s January 13 Letter, the testimony regarding the January 5 telephone call between Dan Green and Coury, and Wilson’s cancellation of the Vault Contract (which occurred *before* Green’s January 12 Letter terminating the Lease).” Ex. A at 21 (emphasis in original). That factual finding, once again, is entitled to deference. Moreover, MCDS’s own January 13 response to Green’s termination letter never asked to cure, never requested reinstatement of the Lease, and never offered to resume budget negotiations. B33. MCDS instead again demanded return of its deposit—the opposite of cure.

The Superior Court also correctly classified MCDS’s repudiation under Section 22.1 of the Lease as an “Abandonment/Vacation” Event of Default, which does not carry the thirty-day cure period that applies to Section 22.3 catch-all defaults. Ex. A at 32 n.196.

6. The Superior Court already rejected all of MCDS’s narratives.

Throughout the Opinion, the Superior Court methodically considered MCDS’s arguments and Coury’s testimony—and rejected them. The Superior Court’s findings fall into two categories: first, the Superior Court rejected MCDS’s version of the facts as inconsistent with the documentary evidence; second, the Superior Court specifically discredited Coury’s trial testimony, expressly crediting

contemporaneous documentary evidence and witness testimony over Coury's litigation-driven testimony. As laid out above, MCDS's opening brief now asks this Court to accept those same rejected narratives as established fact. They are not. By way of example, in addition to the above, the Superior Court also explicitly rejected MCDS's arguments and discredited Coury's version of the following facts:

a. The Superior Court rejected MCDS's arguments as inconsistent with the evidence.

The Superior Court rejected MCDS's economic-logic defense. MCDS argued it would have been illogical for MCDS to repudiate the Lease because repudiation was not economically rational. The Superior Court found: "[E]conomic logic is not dispositive in a contractual repudiation analysis. The court may find a repudiation where the evidence supports repudiation, *even if repudiation was not an efficient breach.*" Ex. A at 23 (emphasis added).

The Superior Court rejected MCDS's damages methodology. MCDS argued that the agreed-upon rent under the Lease was synonymous with fair market value rent—meaning Green's damages would be zero. The Superior Court disagreed: "MCDS's position is essentially that the agreed upon rent under the Lease is synonymous with fair market value rent. MCDS therefore suggests it is impossible to pay a higher rate than fair market value. *Such a position is unsupported by the language of the Lease, which clearly differentiates agreed upon Rent from fair market value rent.*" Ex. A at 33 n.201 (emphasis added).

b. The Superior Court Specifically Discredited Coury's Trial Testimony.

Time and again, the Superior Court found Coury's trial testimony not credible when measured against the contemporaneous documentary evidence and other witness testimony. On each critical disputed fact, Coury took the stand and offered explanations that the Superior Court expressly rejected.

The Superior Court rejected Coury's claim that Green committed the Premises to another tenant. MCDS argued that Green took part of the Premises "off the table" before the December 28 Text. Coury testified at trial that Dan Green told him Green had committed part of the Premises to another tenant. The Superior Court found that testimony not credible:

Dan Green denied telling Coury he had committed part of the Premises to another tenant. No documentary evidence presented at trial shows Green committed any part of the Premises to another tenant before the December 28 Text. *MCDS bases its contention part of the Premises were committed to another tenant on Coury's unsupported testimony.*

Ex. A at 16 (emphasis added). The Superior Court credited Dan Green's denial and capacious supporting documentary evidence over Coury's uncorroborated account.

The Superior Court rejected Coury's explanation of the "Plan B" communications. When confronted with the damning "kill the deal" text messages, Coury testified at trial that he was not instructing Wilson to kill the deal, but was rather "instructing him to focus on Plan B." Ex. A at 24 n.159. But Coury's trial testimony also revealed what "Plan B" actually meant: staying at the Argonne Street

Facility rather than moving to the Premises. The Superior Court rejected Coury’s spin on those communications, finding: “*This contradicts the contemporaneous instructions of Coury to ‘kill the deal,’ and the Court will credit the contemporaneous evidence over litigation-based testimony.*” Ex. A at 24 n.159 (emphasis added). The Superior Court thus found that Coury’s claim that moving to JAG remained “Plan A” while staying at Argonne was merely a backup “Plan B”—rather than a plan to abandon the Lease—was not credible.

The Superior Court rejected Coury’s reading of the December 28 Text.

MCDS argued the text was merely a rejection of the Smaller Space Proposal—not a repudiation of the Lease. The Superior Court disagreed, analyzing the text sentence-by-sentence and finding that the final sentences communicated MCDS’s intent to abandon the Lease entirely. The Superior Court rejected Coury’s after-the-fact interpretation of his own words, based both on the face of the text itself and Coury’s post-message conduct. Ex. A at 17–19.

The Superior Court rejected Coury’s testimony about the January 5 call.

MCDS argued that Coury’s statements during the January 5, 2023, telephone call showed MCDS was willing to continue negotiating. Coury testified that during the call he offered to “get our teams together” and “move down the path to cooperate.” A074 at 124:6–23. The Superior Court found the opposite. It found that during this call, “Coury asked Dan Green to return MCDS’s Deposit, clearly signaling intent

not to proceed with the Lease.” Ex. A at 20. The record further reflects that Coury’s sole purpose behind the January 5 call was to demand return of the security deposit, and when Dan Green reminded Coury that “we had a signed lease” Coury responded that “he didn’t see it that way.” A127 at 84:8–23. The Superior Court also found that MCDS’s January 13 letter “did not walk back the repudiation, or ask Green to resume Budget negotiations. Instead, MCDS again asked Green to return the Deposit.” Ex. A at 20; B33. The Superior Court thus rejected Coury’s claim that the call evidenced a willingness to proceed—finding instead that it confirmed MCDS’s intent to abandon the Lease.

In sum, the Superior Court did not overlook MCDS’s arguments or Coury’s testimony—it rejected them. On the evidence, the Superior Court rejected MCDS’s version of the facts as inconsistent with the documentary record. On credibility, the Superior Court repeatedly found Coury’s trial testimony not believable when weighed against the contemporaneous evidence and other witnesses. MCDS presented every factual narrative and witness testimony it now advances on appeal to the trial court, which weighed them against the documentary record and found them wanting. MCDS cannot satisfy the clear error standard as to any of them. This Court should affirm the judgment.

II. THE SUPERIOR COURT CORRECTLY AWARDED LOST RENT UNDER SECTION 23.1(B) AND 23.1(C).

A. Questions Presented

1. Whether the Superior Court erred in awarding Lost Rent under Sections 23.1(b) and (c) of the Lease.

2. Whether the Superior Court erred in relying on the expert opinion of Donald E. Lochabay.

B. Scope of Review

The Superior Court found that damages in the form of Lost Rent under Sections 23.1(b) and (c) of the lease were proper. The Superior Court’s interpretation of Section 23.1(b) and (c), and whether Green is entitled to those categories of damages, is a question of law, reviewed *de novo*. See § I.B. *supra*; *Travis v. Escape Hospitality, LLC*, 2020 WL 1170768, at *2 (Del. Super. Ct. Feb. 28, 2020) (“It is undisputed that contract interpretation is a question of law.”). The Superior Court’s calculations of those damages, which in-part relied on expert testimony, is a question of fact, which must be upheld unless clearly erroneous. See *US Dominion, Inc. v. Fox News Network, LLC*, 293 A.3d 1002, 1055 (Del. Super. Ct. 2023) (“The calculation of damages is a question for the jury” and “[t]he damage issue is fully joined and intensely factual” particularly when there are competing experts.); see also *Siga Techs., Inc. v. PharmAthene, Inc.*, 132 A.3d 1108, 1128 (Del. 2015), as corrected (Dec. 28, 2015) (“We review its damages determination for abuse of

discretion, and will uphold its factual findings unless they are clearly erroneous.”); *see also Guttridge v. Iffland*, 889 A.2d 283, 2005 WL 3454129, at *4 (Del. 2005) (TABLE) (“Findings relating to damages and to mitigation of damages are issues to be determined by the trier of fact.”).

C. Merits of the Argument

1. The Superior Court correctly found that Green was entitled to Lost Rent under Section 23.1(c).

MCDS argues that Section 23.1(c) of the Lease cannot support an award of lost rent because that provision does not use the word “Rent.” Op. Br. at 32. The Superior Court exhaustively considered and correctly rejected that argument, and this Court should affirm that interpretation.

Section 23.1(c) provides for recovery of “any consequential damages or other amount necessary to fully compensate Landlord for all loss or injury proximately caused by Tenant’s default or which in the ordinary course of business would be likely to result therefrom.” A377 § 23.1 (emphasis added). The language is intentionally broad. It authorizes recovery of *any* damages “necessary to fully compensate” the landlord—which, as the Superior Court recognized, includes lost rent damages under an expectation-damages theory. Ex. A at 37. Indeed, the Superior Court’s Opinion acknowledged the exact argument that MCDS is making now—that Section 23.1(c) does not support recovering rent-based damages because “Sections 23.1(a) and (b) already cover all backward and forward-looking rent,” and

“omits any reference to rent”—and expressly rejected MCDS’s interpretation in holding that “Section 23.1(c) enables Green to recover for lost rent damages.” Ex. A at 27.

The Superior Court reached the correct conclusion by harmonizing subsections (a), (b), and (c) without rendering any section superfluous. Section 23.1(a) addresses past-due rent. A377 § 23.1(a). Section 23.1(b) provides a specific formula for calculating one component of lost future rent—the difference between the contractual rent and fair market value. A377 § 23.1(b). Section 23.1(c) addresses a different category: all other losses proximately caused by the breach. A377 § 23.1(c). Because Green never had a full replacement tenant through the date of trial—meaning the hypothetical tenant that Section 23.1(b) contemplates (a reletting at fair market value) never materialized—the actual lost rent Green suffered fell within Section 23.1(c)’s compensatory mandate. Ex. A at 37. Notably, Green’s damages expert, Lochabay, employed a conservative methodology that actually benefited MCDS: Lochabay assumed a hypothetical replacement tenant would sign a lease by the date of trial, even though a replacement tenant never materialized. Ex. A at 38. The Superior Court expressly found the hypothetical tenant approach to be “a reliable measure of damages” and recognized, “Lochabay’s conservative estimate therefore is a benefit to MCDS, as [Green’s] damages are much larger than even Lochabay’s conservative approach anticipated.” *Id.* at 38 n.226

MCDS's contrary reading—that Section 23.1(c) covers only incidental expenses like “removing signage” and “cleanup”—cannot be squared with the provision's text. Op. Br. at 34. Section 23.1(c) does not limit recovery to incidental costs. Its opening clause (“any consequential damages or other amount necessary to fully compensate Landlord for all loss or injury proximately caused by Tenant's default”) is deliberately comprehensive. A377 § 23.1(c). The “including, without limitation” clause that follows provides a non-exhaustive list of examples, not a limitation. A377 § 23.1(c); Ex. A at 37–38.

Moreover, the Superior Court identified a fundamental flaw in MCDS's construction: MCDS's reading of Section 23.1(c) ignores the connector “or.” Ex. A at 37–38. Though MCDS is correct that Section 23.1(c) does not include the term “rent,” that is because the list of items included in Section 23.1(c) that follow the term “or”—including removing signage and repairing the Premises—are that which “in the ordinary course of business would be likely to result therefrom.” Ex. A at 38. Because the first part of Section 23.1(c) already accounts for “any consequential damages or other amount necessary to fully compensate Landlord” for all loss or injury proximately caused by the breach—which includes lost rent—it is unnecessary to include “rent” in the secondary list of illustrative items. *Id.*; A377 § 23.1(c). The Superior Court's reading thus gives proper effect to the structure of Section 23.1(c): the broad compensatory language before the “or” establishes

Green’s entitlement to full compensation, while the list after the “or” merely provides non-exhaustive examples of the types of costs that ordinarily arise from a tenant’s default. *See* Ex. A at 37–38; A377 § 23.1(c).

Furthermore, MCDS’s interpretation would violate the canon against surplusage. If lost rent can only be recovered through Section 23.1(b)’s formula, and that formula (lease rent minus fair market value) yields a relatively small number (as MCDS contends it should), then Section 23.1(c)’s broad compensatory language—*“any consequential damages or other amount necessary to fully compensate Landlord for all loss or injury”*—would do virtually no work in a case where the landlord’s primary loss is unreceived rent. A377 § 23.1(c). The parties cannot have intended that. *See Copper Mountain, Inc. v. Indus. Sys., Inc.*, 208 P.3d 692, 700 (Colo. 2009) (“We choose a construction of [a] contract that harmonizes provisions instead of rendering them superfluous.”).

The Superior Court’s interpretation also comports with Colorado’s expectation-damages principle: the proper measure of damages for breach of a commercial lease is “the amount it takes to place the landlord in the position [it]would have occupied had the breach not occurred.” *Tremitek, LLC v. Resilience Code, LLC*, 535 P.3d 1005, 1010 (Colo. App. 2023) (alteration in original). Section 23.1(c)’s broad language effectuates that principle.

This Court should affirm.

2. The Superior Court correctly calculated Green’s section 23.1(b) damages.

MCDS raises two challenges to the Section 23.1(b) rate-variance calculation: (1) that Green should have factored in rent abatement rather than using the \$12.50 per square foot base rent; and (2) that James’s fair market value determination of \$9.52 per square foot was unreliable. Op. Br. at 35–37. Both demand deference to the Superior Court and fail. *See US Dominion*, 293 A.3d at 1055 (“The calculation of damages is a question for the jury” and “[t]he damage issue is fully joined and intensely factual” particularly when there are competing experts.); *see Siga Techs.*, 132 A.3d at 1128 (“We review its damages determination for abuse of discretion, and will uphold its factual findings unless they are clearly erroneous.”); *Guttridge*, 889 A.2d 283, 2005 WL 3454129, at *4 (“Findings relating to damages and to mitigation of damages are issues to be determined by the trier of fact.”).

a. No Abatement Offset Is Required.

The Superior Court found that “the use of \$12.50/square foot is proper, as no abatement is necessary given MCDS’s repudiation.” Ex. A at 32. Under the Lease, rent abatement was a benefit MCDS would receive upon taking possession and commencing operations—a benefit MCDS forfeited by repudiating before ever occupying the Premises. Ex. A at 32 n.196 (classifying MCDS’s conduct as “Abandonment/Vacation” under Section 22.1, not a Section 22.3 failure-to-perform default subject to different abatement provisions). Because MCDS never moved in,

the conditions triggering abatement never materialized, and MCDS cannot claim a credit for a benefit it would never have received. This Court should not disturb that finding.

3. The Superior Court Correctly Found that James’s Fair Market Value Determination Was Reliable.

The Superior Court credited Green’s expert Bill James’s determination that the fair market rental value of the Premises was \$9.52 per square foot. Ex. A at 32. James is a licensed and certified Denver real estate appraiser who has been “appraising the Denver market since 1976.” Ex. A at 32; A162 at 222:2–11. He used a standard comparables methodology, identifying eight properties “in the vicinity of Denver International Airport, called the ‘aerotropolis.’” A163 at 228:6–10.

MCDS attacks James’s methodology through its rebuttal expert, Farrell, who argued that James should have used comparables from the same industrial park. *See, e.g.*, A222 at 178:8–179:18. The Superior Court rejected that criticism, crediting “James, who actually has experience in the Denver market, over Farrell, a Chicago resident who is not an appraiser and has no experience evaluating properties in Denver.” Ex. A at 32; A202 at 98:8–14; A203 at 104:22–105:2.

The Superior Court also found that the Lease’s own definition of Fair Market Rental Value supported James’s approach: the Lease defines it as “the rental rate based upon the then prevailing rent for premises comparable in size and use to the Premises” and in “the general vicinity of” the Building. Ex. A at 33 (quoting A403).

“The ‘prevailing rent for premises comparable’ thus excludes, by definition, the Premises and instead requires a comparables analysis”—which is precisely what James performed. Ex. A at 33. The Superior Court emphasized that “[b]y contrast, MCDS’s reading of the Lease that would result in Green receiving \$0 in damages would render Section 23.1(b) superfluous” and that “[t]he presence of Section 23.1(b) reveals the economic reality that, under the Lease, MCDS was going to pay a higher rate than fair market value.” Ex. A at 33.

A trial court’s decision to credit one expert over another is a quintessential factual determination entitled to substantial deference on appeal. *Enserch Corp. v. MacLane Gas Co., L.P.*, 647 A.2d 381, 1993 WL 541911 at *2 (Del. 1993) (TABLE) (“[W]hen there is an apparent conflict in expert testimony, the trial court’s superior opportunity to assess credibility becomes an important consideration warranting greater deference in reviewing its findings of fact.”); *Brown v. Branch*, 150 A.3d 275, 2016 WL 6156194, at *3 (Del. 2016) (TABLE) (“A trial court may determine the weight and credibility to be accorded the testimony of any witness, including an expert.”) (citation omitted). Undoubtedly, the Superior Court here followed a logical deductive approach, and when comparing the competing experts’ credibility, “credit[ed] James [Green’s expert], who actually has experience in the Denver market, over Farrell [MCDS’s expert], a Chicago resident who is not an appraiser and has no experience evaluating properties in Denver.” Ex. A at 32. MCDS has not

demonstrated—and cannot demonstrate—that the Superior Court’s crediting of James over Farrell was clearly erroneous.

CONCLUSION

For the foregoing reasons, Defendant-Below/Appellee Green Industrial Development Group, LLC respectfully requests that this Court affirm the judgment of the Superior Court in all respects.

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