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IN THE SUPREME COURT OF THE STATE OF DELAWARE

ALEXANDER J. SULLA,

Plaintiff/Counterclaim Defendant/Third-Party Defendant Below,

Appellant,

v.

JOZEF ESSAVI,

Defendant/Counterclaim Plaintiff Below,

and

ALI REZAZADE,

Third-Party Plaintiff Below,

Appellees.

No. 222, 2026

APPEAL FROM THE COURT OF CHANCERY OF THE STATE OF DELAWARE, C.A. NO. 2025-1211-JTL

PUBLIC VERSION FILED AUGUST 4, 2026

APPELLANT'S OPENING BRIEF

Dated: July 20, 2026

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NATURE OF PROCEEDINGS

This appeal arises from a Section 225 case ultimately concerning the ownership of Daniell Investments, Inc. ("Daniell"). In 2019, Appellant Alexander J. Sulla ("Sulla") and Appellee Ali Rezazade ("Rezazade") pursued an investment in pre-IPO preferred shares of Newsmax Media, Inc. ("Newsmax"). Sulla formed Daniell as an investment vehicle and contributed $2 million, which was used to purchase Newsmax preferred shares. The plan was for Rezazade to generate millions in additional investments and then control Daniell. But Rezazade never invested any money in Daniell himself, nor generated any other investments.

Daniell, and its Newsmax shares purchased with Sulla's money, sat idle for years until word spread that Newsmax planned to go public. When that news reached Rezazade, he apparently instructed Appellee Jozef Essavi ("Essavi"), purportedly acting as an officer of Daniell, to claim the benefit of Sulla's investment for Rezazade despite the fact that neither Rezazade nor Essavi contributed nary a penny to Daniell. Sulla tried to stop the heist. The dispute led to the brokerage account holding the shares being frozen by Fidelity Brokerage Services, LLC ("Fidelity"). Fidelity refused to unfreeze the account absent a court order or a signed agreement by the parties.

Sulla filed the Section 225 action below to resolve the control dispute. *See* A035-59. At first, Sulla named Essavi as the defendant because Essavi appeared to be the one attempting to take control of the Newsmax shares. Alongside an amended responsive pleading, Rezazade joined the action as a third-party plaintiff. *See* A060-100. The dispute narrowed in on the beneficial ownership of Daniell's stock. Sulla asserted that he is the only equitable shareholder of Daniell because he is the only one who invested any money into Daniell, producing bank records that show his consulting business, ASI Consulting, Inc. ("ASI") transferred approximately $2 million into Daniell, and then Daniell wired $2 million to Newsmax to purchase preferred shares.

Rezazade claimed that he sourced the $2 million. Throughout discovery, he insisted he would support that claim after seeing the bank records produced by Sulla. After Sulla produced the bank records that contradict Rezazade's story, Rezazade speculatively accused Sulla of producing fraudulent records and refused to support his claim until JPMorgan produced records in response to his subpoena. JPMorgan ultimately produced the exact same bank records that Sulla did. Rezazade still refused to explain his claim. In fact, Rezazade never produced a single document in discovery. Instead, he moved for summary judgment and asserted that he need not participate in discovery. *See* A119-232. When he moved for summary judgment,

Rezazade claimed in an affidavit that he arranged for his contacts to wire money to ASI, and thus he is the source of the $2 million. *See* A135-139. Facing a claim Rezazade promised to support but never did, and without any document discovery at all from him, Sulla moved to compel Rezazade to produce documents and substantiate his claim. *See* A233-391. Sulla asked the Court of Chancery to reschedule the looming trial so discovery could be completed. *Id.*

The parties briefed the motion for summary judgment, the motion to compel, and prepared for trial on an incomplete record. Throughout all of this, Rezazade never identified his "contacts" and never attempted to reconcile the bank records with his assertion even though the bank records show the names of the entities that wired the money to ASI, entities that Sulla presumably believes are somehow connected to his "contacts."

The Court conducted a pre-trial conference on March 16, 2026, and began by hearing presentations on the motion for summary judgment. *See* Exhibit C. After those presentations, the Court issued an oral ruling granting summary judgment in favor of Rezazade. Although the parties disputed the source of the $2 million, the Court of Chancery granted summary judgment in favor of Rezazade and Essavi, concluding that Rezazade beneficially owns 100% of Daniell's outstanding stock. *See* Ex. A. The upshot of that conclusion is that, even though Rezazade invested

nothing into Daniell and never substantiated his claim to be the source of the $2 million, Rezazade gained control of the Newsmax stock that Daniell purchased with Sulla's money—worth roughly $4.5 million today—for free.

That is a forfeiture that equity abhors. *Jefferson Chem. Co. v. Mobay Chem. Co.*, 267 A.2d 635, 637 (Del. Ch. 1970). Sulla contributed $2 million to Daniell and Daniell used his money to purchase pre-IPO preferred shares of Newsmax. No one else ever contributed any money to Daniell, and Daniell never bought any more shares of Newsmax. By granting summary judgment for Rezazade and Essavi, the Court of Chancery stripped Sulla of the advantage of his investment and handed it to Rezazade.

After the conference, the parties submitted letters detailing any open matters that needed attention at the Court's instruction. Sulla indicated an intent to appeal and Rezazade an intent to pursue an application to shift expenses, including his attorney's fees. In a March 24 Minute Order, the Court stated it would enter a Rule 54(b) order on the merits so that the appeal and fee application could proceed simultaneously. The parties negotiated and proposed a partial final judgment, which the Court entered on June 2, 2026. Ex. B. Sulla noticed the instant appeal the same day. Because Rezazade could liquidate the Newsmax stock at any time, likely

placing it beyond recovery, Sulla moved to stay the judgment pending appeal. The Court granted the motion and entered Sulla's proposed order on June 17, 2026.

Instead of recognizing that both sides' claims to be the source of the $2 million created a material factual dispute that required denying summary judgment, the Court of Chancery created a new explanation of the evidence not offered by any party—that Sulla's $2 million investment was a loan or advance to Rezazade. That finding came from the Court's viewing of the evidence, and making inferences from it, against Sulla, the non-movant. Thus, the Court's grant of summary judgment resulted from a misapplication of the summary judgment standard and must be reversed.

SUMMARY OF ARGUMENT

1. The Court of Chancery erred when it granted summary judgment in favor of Rezazade and Essavi on a disputed record by adopting an interpretation of the evidence that no party had proffered. The Court improperly inferred that a Consulting Agreement between Newsmax and Sulla, and an Agreement to Provide Additional Capital between ASI and Rezazade, suggested that Sulla's $2 million investment into Daniell was more likely a loan or advance to Rezazade. Because the Court viewed the evidence and made inferences from it favorable to Rezazade, the non-movant, to resolve a material factual dispute about who sourced the $2 million that Daniell used to purchase the Newsmax preferred shares, the decision below should be reversed.

STATEMENT OF FACTS

A. Relevant parties and non-parties.

This appeal concerns the ownership and control of Daniell Investments, Inc., the Nominal Defendant in the 8 *Del. C.* § 225 action below. Daniell is a private Delaware corporation owning shares of Newsmax, Inc. as its only asset. Those shares are held in an account at Fidelity Brokerage Services, LLC. A035.

Appellant Alexander J. Sulla is an individual primarily residing in California. A037. In this appeal, Sulla maintains that he is the only beneficial shareholder of Daniell.

Appellee Jozef Essavi is an individual residing in California. A063. Essavi claims he is the Secretary of Daniell. A073.

Appellee Ali Rezazade is an individual residing in Ukraine. A073. Rezazade claims he is the sole owner/shareholder and Director of Daniell, and its President, Chief Financial Officer, and Chief Executive Officer. A073.

Non-party ASI Consulting, Inc. is California corporation wholly owned by Sulla. A105. ASI is the entity through which Sulla ran his consulting business. A402. In 2019, Sulla, through ASI, capitalized Daniell with $2 million. A402. That $2 million was then used by Daniell to buy preferred stock of Newsmax Media, Inc., a private Delaware corporation at the time. A403-04.

Non-party Newsmax Media, Inc. is now a Florida corporation that is wholly owned by and the operating company of Newsmax, Inc. Newsmax, Inc. is a Florida corporation that is a holding company owning 100% of the equity interest of Newsmax Media, Inc. In 2024, Newsmax Media, Inc. reorganized, Newsmax Inc. was formed as a new holding company that owns all the outstanding shares of Newsmax Media, Inc., and the stockholders of Newsmax Media, Inc. exchanged their shares of capital stock in Newsmax Media, Inc. for the same class and number of shares in Newsmax Inc. On March 28, 2025, Newsmax, Inc. conducted an initial public offering, and on March 31, 2025, listed on The New York Stock Exchange under the ticker symbol "NMAX". *See* Disclosure of Corporate Affiliation and Financial Interest, filed on behalf of Appellant Alexander J. Sulla, D.I. 7, at 2.

B. The investment opportunity.

In or around the first half of 2018, Sulla became acquainted with Newsmax CEO and founder, Christopher Ruddy. A401. Newsmax was conducting a private offering. A401. Sulla was interested in the opportunity and wanted to share it with his connections in Europe, so much so that he brought Ruddy to Ukraine to meet with potential investors later that year. A401; Tr. 25:17-22. Sulla and Ruddy continued to discuss the investment opportunity into 2019. A401.

One of Sulla's connections expressed interest, Ali Rezazade. A401; Tr. 25:22-23. Rezazade told Sulla that Rezazade could bring in contacts who were willing to invest millions in Newsmax. A401. Sulla believed him. Sulla used his longtime personal attorney, Dennis Hawk, to form Daniell as an investment vehicle in January 2019. A402; TR 26:2-5. Daniell's certificate of incorporation authorized the issuance of 10,000 shares of common stock. A045. Consistent with the plan that Rezazade would generate further investment funds, Rezazade was treated as the initial director and officer of Daniell. A402; Tr. 28:10-15. If Rezazade generated the millions that he claimed he would, Sulla would be passive and Rezazade would run Daniell. A402.

C. The Newsmax stock purchase.

The next month, Newsmax pressured Sulla to invest. A395. Rezazade had not secured any investors. A395. Because of his friendship with Ruddy, Sulla told Rezazade that Sulla would make an initial investment with his own money and Rezazade could bring in additional investors later. A395-96.

On or about February 6, 2019, Newsmax and Daniell executed a Subscription Agreement through which Daniell agreed to purchase 69.67 shares of Preferred Stock at the purchase price per share of $28,705.93, and an aggregate purchase price of $2 million. A455-68 (Subscription Agreement); Tr. 26:6-11. Rezazade signed

this document on behalf of Daniell, listing his title as "President." A462; Tr. 26:14-15.

On or about February 8, 2019, ASI and Newsmax executed a Consulting Agreement. A159-66 (Consulting Agreement); Tr. 26:18-21. Under this agreement, ASI would be paid a 5% commission on investment funds that ASI generated before a termination date of December 31, 2019, or within a 6-month tail period thereafter. A160; Tr. 26:24-27:2. The Consulting Agreement listed Daniell as the first target investor and Rezazade as the second. A165; Tr. 27:2-5.

Also on or about February 8, 2019, ASI and Daniell executed an Agreement to Provide Additional Capital. A174-78. That agreement listed Rezazade as the owner of Daniell and called for Rezazade to provide $2,050,000.00, and thereafter up to an additional $13 million in two tranches of $3 million and $10 million. A174; A178. Those sums were "[i]n addition to the initial capitalization of the Company." A174. This agreement would also terminate on December 31, 2019. A175.

Sulla capitalized Daniell with $2 million transferred from his consulting business, ASI. A415 (ASI's February 2019 bank statement for the account ending 6682 showing check 528 in the amount of $988,000 paid to Daniell on 2/15/19); A416 (showing a $1,032,000 transfer to a checking account ending in 1602 on 2/20/19); A423-24 (Daniell's February 2019 bank statement for the account ending

1602 showing a $988,000 deposit on 2/15/19 and a $1,032,000 transfer in from ASI's checking account ending 6682 on 2/20/19, and then a $2 million wire to Newsmax on 2/21/19). Daniell then wired $2 million to Newsmax for the stock purchase under the Subscription Agreement. A424 (Daniell's February 2019 bank statement for the account ending 1602 showing a $2 million wire to Newsmax on 2/21/19). Because Sulla technically generated this investment by Daniell for Newsmax, Newsmax paid Sulla a 5% commission, or $100,000, under the Consulting Agreement. A170.

After the investment, Sulla told others, including Newsmax, that Rezazade was the owner of Daniell because that had been the plan and Sulla expected Rezazade to live up to his promises to bring in investors. A396. But Rezazade never provided any of the contemplated additional capital, either himself or through investors he said he would source. A396. By the time the control disputed ripened six years after Rezazade had promised to bring in millions of dollars, Rezazade had brought in nothing. A396. Sulla's $2 million was the only money every contributed to Daniell. A396.

D. The control dispute ripens while Newsmax goes public.

For years, Daniell existed as a passive investment vehicle that held the Newsmax preferred shares. A404. It appears that Essavi's and Rezazade's efforts

to take control of the Newsmax stock picked up sometime around Spring 2024. A404-05. Rezazade purportedly appointed Essavi as his agent and instructed Newsmax to share information with Essavi. A377. In or around late 2024, news emerged that Newsmax was planning to go public. A404. Around the same time, Sulla learned that Rezazade had been making representations about the Newsmax shares and grew concerned that Rezazade may claim ownership of the shares. A404-05.

After Newsmax issued common stock to Daniell and went public, in or around June 2025, because Sulla was the only capital contributor and equitable shareholder of Daniell, he investigated how to access the Newsmax common stock. A405. Over the summer, Sulla opened a brokerage account with Fidelity Investments and caused Daniell to transfer the Newsmax common stock into that account. A405. After learning of Essavi's unlawful attempts to access and control the Fidelity account, Sulla took steps to stop him. A405. Sulla filed a police report with the Los Angeles Police Department, reported the business identity theft to the IRS, and filed a corrective notice with FinCEN. A040. Fidelity ultimately restricted the account until it receives either a court order resolving the control dispute or a jointly signed written agreement. A041.

E. The Section 225 Litigation.

Sulla filed his Verified Complaint Pursuant to 8 *Del. C.* § 225 in the Court of Chancery on October 22, 2025. A035-43. The Verified Complaint sought declarations that (1) Essavi was never appointed as an officer or director of Daniell; (2) Sulla is the sole officer and director of Daniell; (3) Sulla has the authority to direct the Fidelity account on behalf of Daniell. A042-43. The Verified Complaint alleges that Sulla is a shareholder of Daniell because he "made an approximately $2 million investment in Daniell through another entity he controls, ASI Consulting, Inc. In exchange for this contribution, Mr. Sulla was to receive 10,000 shares of Daniell common stock." A038. Further, Sulla alleged that he "is, and at all relevant times has been, the sole shareholder" of Daniell. A039.

Appellees filed a Verified Amended Answer with Affirmative Defenses, Verified Amended Counterclaims and Verified Third-Party Complaint on December 19, 2025. A060-84. In substance, the two counts in this combined pleading were brought by Rezazade and requested judgment in his favor. A083. Essavi requested judgments in his favor on those counts "[t]o the extent joinder is permitted under Delaware Law." A083. Rezazade alleged that he "is the sole Owner/Shareholder and Director, as well as President, Chief Financial Officer and Chief Executive Office" of Daniell and that Daniell was formed at the direction of, and with financing

supplied by Rezazade. A073. Rezazade further alleged that he "supplied" the funds used to invest in Newsmax and that "[t]o the extent the Company issued any shares, that issuance should have been faithful to the source of investment financing and capital contribution - - they should have been issued to Mr. Rezazade as legal or beneficial owner." A075.

Sulla answered the amended pleading on January 7, 2026. A101-18. Given the expedited schedule, discovery proceeded as the pleadings developed. Understanding the importance of the competing allegations about who financed Daniell, Sulla promptly investigated Rezazade's claim to be the source of the $2 million. A236-37. Rezazade responded that he "is the source of the funds" and that bank records were destroyed in the war, but that he would "provide a more particularized response" once Sulla produced ASI's bank records. A236.

Sulla produced ASI's bank records on February 5, 2026. A237; A414-19. Soon after, Sulla directed Rezazade to the bank statement pages containing the relevant transactions and the names of the entities that transferred the funds to ASI. A238. With Rezazade in possession of the records he conditioned his "more particularized response" on, Sulla requested that response. A238. Rezazade did not respond, and when Sulla followed up again, Rezazade offered to meet and confer on this and other discovery issues described in Sulla's motion to compel. A239. Sulla

proposed February 23, but Rezazade said the 23rd and 24th were inconvenient and he was presently out of office. A239. Sulla proposed the 25th or 26th but did not receive a response and followed up again on the 24th. A239.

It turned out that the 23rd and 24th were inconvenient because Rezazade wanted to file motions instead of conducting the conference that he offered. A239 Rezazade first filed a motion to compel a response to a subpoena targeting JPMorgan Chase & Co. that sought the same records from JPMorgan that Sulla had already produced—ASI's bank statements and information relating to the source of the $2 million. A013; A239. Then he filed the summary judgment motion that led to this appeal. A012-13; A119-232; A239.

On February 25, Rezazade informed Sulla he could not meet and confer because he was "behind on other matters" and used the motion to compel that he filed against JPMorgan to again avoid providing the promised "more particularized statement" about his claim to be the source of the $2 million. A240. Rezazade said he would give the statement once the motion is resolved, accused Sulla of providing fraudulent account statements, and called Sulla's pursuit of discovery a "side show." A241. On March 6, 2026, Sulla moved to compel Rezazade to correct numerous deficiencies in his discovery practices, including compelling him to provide the promised "more particularized statement" explaining why he believes he is the

source of the $2 million used to purchase Newsmax stock. A233-391. That evening, Sulla opposed Rezazade's motion for summary judgment. A392-A471. JPMorgan produced ASI's bank records on March 10, 2026. *See* A008.

The parties prepared for trial notwithstanding the incomplete record and outstanding motions. Rezazade contended that he and Essavi need not comply with discovery obligations because they deserve summary judgment, even going so far as to ask to be relieved from pre-trial briefing. A485; A005-06.

On March 16, 2026, the Court of Chancery held a pre-trial conference. *See* Ex. C. The Court heard presentations on the motion for summary judgment before issuing an oral ruling granting the motion. *See* Ex. C. The Court entered an order granting the motion later that day. Ex. A. After letters from the parties regarding whether any open matters existed, the Court issued a minute order stating it would enter a Rule 54(b) order on the merits so that Sulla could appeal the summary judgment order while Rezazade could pursue an application to shift expenses, including his attorney's fees. A003. On June 2, 2026, the Court of Chancery entered a partial final order under Court of Chancery Rule 54(b), entering judgment in favor of Rezazade and Essavi and against Sulla consistent with its summary judgment order. Ex. B. Sulla appealed the partial final judgment that day. This is Sulla's opening brief, and for the reasons stated herein, this Court should reverse the Court

of Chancery's grant of summary judgment and entry of a partial final order, and remand this case for further proceedings.

ARGUMENT

I. The Court of Chancery Misapplied the Summary Judgment Standard by Viewing the Evidence Favorably to Rezazade and Inferring that Sulla's $2 Million Investment was a Loan or Advance to Rezazade.

A. Questions Presented

Did the Court of Chancery misapply the summary judgment standard by viewing the Consulting Agreement and Additional Capital Agreement as favorable to the movants and finding that Sulla's $2 million contribution to Daniell was a loan or advance for Rezazade and not an investment by Sulla that made him the only equitable shareholder of Daniell? A409-10; Tr. 4:11-5:6.

B. Scope Of Review

"This Court reviews a decision granting of summary judgment *de novo*." *Emerald Partners v. Berlin*, 726 A.2d 1215, 1219 (Del. 1999) (citing *Arnold v. Society for Savings Bancorp, Inc.,* 650 A.2d 1270, 1276 (Del. 1994)). The Court "determines whether the record shows that there is no genuine issue of material fact, thus entitling the moving party to judgment as a matter of law." *Id.* The trial court's factual conclusions are accepted "if they are sufficiently supported by the record and are the product of an orderly and logical deductive process." *Id.* "[M]ixed questions of law and fact, including determinations of materiality, are also reviewed *de novo.*" *Id.*

C. Merits Of Argument

A court "must grant summary judgment if the movant shows that there is no genuine dispute as to any material fact and the movant is entitled to judgment as a matter of law." Ct. Ch. R. 56(a). A party asserting there is a genuine factual dispute "cannot rest upon unverified allegations or denials in its pleadings. Ct. Ch. R. 56(c)(1). "The party must support the assertion by: (A) citing to . . . particular parts of materials in the record, including . . . documents, . . . verified pleadings, or other materials; or (B) showing that the materials cited do not establish the absence . . . of a genuine dispute . . . ." Ct. Ch. R. 56(c)(1).

"In evaluating the record on a motion for summary judgment, a trial judge is not permitted to weigh the evidence or resolve conflicts presented by the pretrial discovery." *Telxon Corp. v. Meyerson*, 802 A.2d 257, 262 (Del. 2002) (citing *Cerberus Intern., Ltd. v. Apollo Management, L.P.*, 794 A.2d 1141, 1149-50 (Del. 2002)). The test is "whether the evidence, when viewed in the light most favorable to the nonmoving party, presents any dispute of material fact." *Id.* (citation omitted). Any inferences from the evidence must be made in the light most favorable to the non-movant. *GMG Ins. Agency v. Edelstein*, 328 A.3d 302, 309 (Del. 2024). A material factual dispute exists when "the parties are in disagreement concerning the

factual predicate for the legal principles they advance." *Merrill v. Crothall-Am., Inc.*, 606 A.2d 96, 99 (Del. 1992).

Delaware law has "long recognized that 'inequitable action does not become permissible simply because it is legally possible.'" *Backer v. Palisades Growth Cap. II, L.P.*, 246 A.3d 81 (Del. 2021) (quoting *Schnell v. Chris-Craft Indus., Inc.*, 285 A.2d 437, 439 (Del. 1971)). Section 225 actions are not excepted. *Id.* at 97. Section 225(a) allows the Court of Chancery to

> hear and determine the validity of any election, appointment, removal or resignation of any director or officer of any corporation, and the right of any person to hold or continue to hold such office, and, in case any such office is claimed by more than 1 person, may determine the person entitled thereto; and to that end make such order or decree in any such case as may be just and proper . . . .

8 *Del. C.* § 225(a). "A Section 225 proceeding is summary in character, and its scope is limited to determining those issues that pertain to the validity of actions to elect or remove a director or officer." *Genger v. TR Invs., LLC*, 26 A.3d 180, 199 (Del. 2011). Cognizable claims in a Section 225 action are those that "'if meritorious, would help the court decide the proper composition of the corporation's board or management team.'" *Id.* (quoting *Agranoff v. Miller,* 1999 WL 219650, at *17 (Del. Ch. Apr. 12, 1999) (internal citation omitted), *aff'd as modified,* 737 A.2d 530 (Table), 1999 WL 636634 (Del. 1999)). The Court of Chancery can adjudicate

claims in that other "helpful" category "but only for the limited purpose of determining the corporation's *de jure* directors and officers." *Id.* at 200. The power to "determine the 'validity' of an election and the 'right' of a person to hold office as a director" includes "the power to adjudicate a dispute over beneficial ownership if doing so is necessary to determine the valid and rightful directors of a Delaware corporation." *Zohar II 2005-1, Ltd. v. FSAR Holdings, Inc.*, 2017 WL 5956877, at *25 (Del. Ch. Nov. 30, 2017).

The Court below incorrectly concluded that (1) "there are no disputes of material fact as to the . . . stockholders of Daniell Investments, Inc."; (2) "Rezazade beneficially owns 100% of [Daniell's] outstanding stock"; and (3) "Sulla does not have any claim to own any equity of [Daniell], whether beneficially or of record." Ex. A. Those conclusions rested on the Court's finding that Sulla's $2 million investment was a loan or advance to Rezazade. That finding resulted from the Court viewing the evidence, and making inferences from it, in favor of the moving party, a misapplication of the summary judgment standard.

To conclude that no disputes of material fact exist about the stockholders of Daniell, the Court below relied on two pieces of evidence. First, the Court below viewed the Consulting Agreement and Newsmax's payment to ASI under it as suggestive of an advance or loan arrangement between Sulla and Rezazade,

reasoning that Newsmax would not pay Sulla a commission for his own money. *See* Tr. at 26:18-27:18, 28:18-29:4. The Consulting Agreement, however, aligned with the broader arrangement among Newsmax, Sulla, and Rezazade, that Sulla would find investors for Newsmax, Rezazade included (and any contacts he allegedly had), any money invested would flow through Daniell to Newsmax, and Sulla (via ASI) would get a commission on the back end.

The inference that should have been made in favor of Sulla is that the Consulting Agreement and Newsmax's commission payment reflected a willingness by Newsmax to pay ASI commissions for all money that Daniell invested. That inference can be drawn in Sulla's favor from the fact that the Consulting Agreement listed Daniell as the first Target Investor, which shows that Newsmax expected an investment from Daniell and was not necessarily concerned with who had funded Daniell. *See* A165. After all, Sulla introduced Daniell to Newsmax and the two companies entered into the Subscription Agreement, and Daniell actually invested. *See* A160. On its face, the transaction appeared worthy of a commission even if not perfectly sequenced. Moreover, Rezazade was listed as the second Target Investor on the Consulting Agreement. A165. If Newsmax would assume that any money from Daniell was ultimately attributable to Rezazade, it was unnecessary to list him separately. And, given that Rezazade was a Target Investor himself and an

investment by him would have resulted in a commission to Sulla, it makes little sense that Sulla would have loaned or advanced money to Rezazade through Daniell, instead of directly to Rezazade. If Newsmax did not intend to pay Sulla a commission for any investment of his own money, even if routed through Daniell, it could have so provided in the Consulting Agreement.

At worst, Sulla funneled his money through Daniell when he could have invested directly, and being none the wiser, Newsmax paid Sulla a commission. All that may mean is that Sulla may not have deserved a commission for his investment, not that his investment was actually an advance or loan to Rezazade. But again, Newsmax was expecting the money to come from Daniell, suggesting that it was not concerned with the underlying funder. Given Ruddy's relationship with Sulla, including their trip together to Ukraine, it is entirely possible that Ruddy was willing to overlook technicalities to return a favor to a friend. From the perspective of a fledgling company needing capital like Newsmax, paying a $100,000 commission in exchange for a $2 million investment, even if not technically deserved, is a good deal.

Thus, the Court below improperly inferred from the Consulting Agreement and commission payment that Sulla advanced or loaned money to Rezazade when it

should have inferred that Newsmax knew that money was coming from Daniell and paid Sulla a commission because the money did, in fact, come from Daniell.

The piece of evidence that the Court below viewed as cutting against Sulla stemmed from the Agreement to Provide Additional Capital. A174-78. The Court reasoned that Sulla's $2 million investment was best viewed as the approximately $2 million initial investment called for by the Agreement to Provide Additional Capital. Tr. at 27:19-28:9. The Court explained that although it is "not clear from that agreement whether the 2 million is referring to the initial 2 million that goes into the company or not . . . the best interpretation is that the $2 million is talking about Rezazade repaying ASI for $2 million that it would later advance, and then Rezazade is also going to raise an additional $13 million." Tr. at 28:1-9.

The Court's interpretation contradicts the words of the agreement. At the most basic level, viewing Sulla's $2 million as the initial $2 million called for by this agreement contradicts its title as an Agreement to Provide *Additional* Capital, because the $2 million would be in addition to nothing. Moreover, the first paragraph begins, "[i]n addition to the initial capitalization of [Daniell]," a phrase that, read most favorably to Sulla, can only refer to one thing—Sulla's $2 million initial capitalization of Daniell. A174. The agreement goes on, providing that Rezazade "agrees to initially provide Two Million Fifty Thousand Dollars

($2,000,050) [sic] and thereafter up to an additional Thirteen Million Dollars ($13,000,000) of additional capital to [Daniell]." A174. Paragraph 1(a) requires that Rezazade "shall provide [Daniell] the additional capital contributions (each a "Capital Contribution") on the dates and in the specific amounts as shall be set forth in Appendix 1." A174. Appendix 1 consequently requires Rezazade to contribute $2,050,000 on February 19, 2018 (the year surely being a typo). A178. By February 18, Sulla had already contributed $988,000 into Daniell, with the rest of his contribution transferring on February 20. A415, A418 (ASI's February 2019 bank statement for the account ending 6682 showing check 528 in the amount of $988,000 paid to Daniell on 2/15/19); A416 (showing a $1,032,000 transfer to a checking account ending in 1602 on 2/20/19). Though this amount is defined as the "Initial Capital Contribution," that term is not used anywhere else in the agreement. A178. The next additional contributions are in the amounts of $3 million and $10 million, are undated, and also defined with terms not used anywhere else in the agreement. A178. In any event, Appendix 1 aligns with Rezazade agreeing to "initially provide" $2,050,000 and thereafter up to $13 million, all "in addition to the initial capitalization" of Daniell. A174; A178.

True, the Agreement to Provide Additional Capital recites that "Ali Rezazade is the owner of one hundred percent (100%) of the Company, a special purpose

vehicle (SPV), and along with Investor [(defined as Ali Rezazade)] has agreed to enter into this Agreement to provide, upon the term and conditions of this Agreement, additional capital contributions to the Company." A174. When viewed in Rezazade's favor, this may appear as "direct evidence that Rezazade is the sole stockholder of Daniell at that time." Tr. at 27:23-24. But when viewed in Sulla's favor, that recital merely represents the parties' treatment of Rezazade as the owner of Daniell because he planned to contribute an additional $15 million. Rezazade never delivered any of that additional $15 million.

Had the Court made inferences in favor of Sulla instead of Rezazade, it could not have escaped the existence of a material factual dispute that required denying summary judgment. Sulla's Verified Complaint alleges that he invested $2 million into Daniell and thus he is its only shareholder. A038-39. Rezazade's Third-Party Complaint alleges that Rezazade "supplied" the "funds," that if Daniell issued shares, "they should have been issued to Mr. Rezazade as legal or beneficial owner" as the "source of investment financing and capital contribution," and that Rezazade is the "sole owner" of Daniell. A075.

In discovery, Sulla tested Rezazade's claim to be the source of the $2 million, but Rezazade never substantiated it. Rezazade responded that he "is the source of the funds," that his records were destroyed in the war between Ukraine and Russia,

but that he would "provide a more particularized response" when Sulla produced bank records for ASI. A236. Sulla produced those bank records, which included the names of the entities that transferred the funds to ASI. A414-15 (showing deposits from various entities in Poland and Hungary).

When Sulla requested the "more particularized statement," Rezazade dodged the promise by creating one excuse after another. He offered to meet and confer but said the two dates Sulla provided were inconvenient. A238-39. Sulla proposed two different dates. A239. Rezazade's counsel did not respond. A239. Instead of conducting the conference he offered, Rezazade filed motions on the days he claimed were inconvenient. A239. The first moved to compel a response to a subpoena targeting JPMorgan Chase & Co.; the second for summary judgment. A239.

After filing the motions, Rezazade refused to meet and confer. A240. He claimed he was too busy and could not give the promised "more particularized statement" about the $2 million until the motion to compel resolved. A240-41. The subpoena sought information that Rezazade already had—ASI's bank statements and information relating to the source of the $2 million. A239. To avoid this inconvenient reality, Rezazade accused Sulla of providing fraudulent statements. A240-41.

Meanwhile, Rezazade's summary judgment affidavit stated that he recruited contacts to wire $2 million to ASI. A136-37. It said nothing more about the $2 million—nothing about the bank records, the entities that transferred the money to ASI, who the "contacts" were. Rezazade made no attempt to establish any connection between himself and the entities that trasnferred the money to ASI. If he instructed his "contacts" to wire *$2 million*, one would think Rezazade would know who those contacts were, or even recognize the names of the entities. The promise to provide a "more particularized statement" about the $2 million was really just a ruse to avoid providing any explanation at all.

Rezazade never alleged that Sulla's $2 million was a loan or advance and that material issue has not been raised or briefed, yet the Court resolved it in the movants' favor. The natural opportunity for Rezazade to assert that theory was in response to Sulla's discovery requests into Rezazade's claim that he sourced the $2 million. If he had ever asked Sulla for an advance or loan to satisfy Newsmax while Rezazade continued encouraging his contacts to invest, he could have said so in response to interrogatories and produced supporting documents. Instead, Rezazade avoided explaining the basis for his claim like it was the plague and did not produce a single document. Rezazade merely claimed that the money came from his contacts, without any further explanation, identification of those contacts, or reconciliation of

the transactions in ASI's bank records. Sulla produced bank records showing that the money came from his company, ASI. Aside from the Court's perspective on the Consulting Agreement and Agreement to Provide Additional Capital, there is no other documentary evidence in the record that suggests that the parties viewed Sulla's $2 million as an advance or loan, nor any communications.

The record before the Court of Chancery on the source of the $2 million was this. On the one hand, Sulla alleged under oath that he invested $2 million into Daniell and he is its only shareholder. A038-39. Sulla points to bank statements that substantiate his verified allegations. A414-19; A423-24. On the other hand, Rezazade alleged under oath that he is the source of the $2 million because he recruited contacts to wire it to ASI. A075; A136-37. His evidence stems from two agreements. First, the Consulting Agreement and the commission paid to Sulla under, which the Court viewed as suggesting the $2 million came from a third-party, because intuition says Sulla would not get a commission from his own investment. Tr. at 26:18-27:18, 28:18-29:4. And second, the Agreement to Provide Additional Capital, which listed Rezazade as the 100% owner of Daniell and says that, "[i]n addition to the initial capitalization of [Daniell]," Rezazade will "initially provide" $2,050,000 "and thereafter up to an additional" $13 million. A174. Although it is "not clear from that agreement whether the 2 million is referring to the initial 2

million that goes into the company or not," the Court reasoned that "the best interpretation is that the $2 million is talking about Rezazade repaying ASI for $2 million that it would later advance, and then Rezazade is also going to raise an additional $13 million." Tr. at 28:1-9.

On summary judgment, all this evidence must be viewed in the light most favorable to Sulla, and any inferences from it made in his favor. But as explained above, the Court of Chancery did not follow that mandate. What is left when Rezazade's evidence is viewed, and inferences from it made, most favorably to Sulla? A factual dispute in which both sides claim to have supplied the only money invested into Daniell. The upshot is that the winner controls Daniell, and in turn, the appointment or removal of Daniell's directors and officers, making that factual dispute material to this Section 225 action. Thus, the grant of summary judgment in favor of Rezazade and Essavi and against Sulla, and resultant partial final judgment, must be reversed.

CONCLUSION

The Court of Chancery's grant of summary judgment in favor of Rezazade and Essavi must be reversed because it resulted from viewing the evidence, and making inferences from it, in favor of Rezazade, a misapplication of the summary judgment standard. That misapplication caused a deeply inequitable result—a forfeiture of Sulla's $2 million investment and the roughly $4.5 million benefit it carries. A proper application of the summary judgment standard required denial of the motion because the parties dispute who sourced the $2 million. That factual dispute is material because it is the factual predicate for determining who is the only beneficial owner of Daniell, and thus the controller of Daniell. The Court should reverse the Court of Chancery's grant of summary judgment in favor of Rezazade and Essavi, and the partial judgment that made granting order final, and remand the case for further proceedings.

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