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Control Issues: Delaware Holds Parties to Their Bargain in Recent Governance Decisions

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Delaware is widely known as a "contractarian" state when it comes to corporate law, upholding freedom of contract principles for sophisticated parties. That bias was on display in three recent post-trial Court of Chancery decisions involving control and governance of closely held Delaware companies:

- In *Ropko et al. v. McNeill, Jr.*,[1] the Court held that an LLC manager could not turn a voting agreement—requiring the other managers to vote in lockstep—into unrestricted authority to remove them by unilateral written consent.
- In *Fortis Advisors, LLC v. Krafton, Inc.*,[2] the Court rejected a buyer's attempt to seize control of the target company by fabricating grounds to terminate its founders for "Cause."
- In *In re Priority Responsible Funding LLC*,[3] the Court declined to permit one of two co-managing members to keep a deadlocked LLC afloat because the operating agreement lacked a tiebreaker mechanism.

Together, these decisions highlight that, when control and governance are in dispute, Delaware courts will enforce not only the rights parties grant—but the constraints and gaps they accept.

Authority Must Be Explicitly Granted

The dispute in *Ropko* arose over control of McNeill Investment Group, a Delaware LLC governed by a three-member managing board: founder and majority equity holder Phillip McNeill, Jr., CEO Christopher Ropko, and COO Thomas Burdi. Ropko and Burdi entered into a voting agreement obligating them to vote in the same manner as McNeill. The LLC's operating agreement required a

[1] C.A. No. 2024-1193-PAF, 2026 WL 732727 (Del. Ch. Mar. 16, 2026).

[2] No. 2025-0805-LWW, 2026 WL 730977 (Del. Ch. Mar. 16, 2026).

[3] C.A. No. 2024-0651-NAC, 2026 WL 674490 (Del. Ch. Mar. 10, 2026).

majority vote of the managing board to remove officers. Nonetheless, McNeill executed a unilateral "Removal Consent" purporting to remove Ropko and Burdi, who sued to invalidate the action.

Following trial, the Court of Chancery (Hon. Paul A. Fioravanti, Jr.) ruled for Ropko and Burdi.[4] The voting agreement, the Court explained, obligated Ropko and Burdi to vote in the same manner as McNeill; it did not confer upon McNeill their proxy, appoint McNeill as their agent, nor confer upon McNeill their voting power.[5] As the LLC's operating agreement required a majority of the three-member board (comprised of McNeill, Ropko, and Burdi) to approve the removal of an officer, McNeill's unilateral action was insufficient.

The Court rejected McNeill's contention that a full board vote would have been futile, noting that a board meeting would have given Ropko and Burdi the opportunity to argue against their removal. The Court emphasized that full board consultation and deliberation are key components of corporate governance mandated—not contracted away—under the LLC's operating agreement.[6]

Ropko underscores that a party may not exceed the control mechanisms expressly set out in an LLC's governing documents. Although a lockstep voting agreement with McNeill would seem to have rendered academic any board vote, the Court disagreed, emphasizing that the formal process of convening a meeting, deliberating, and recording a vote is itself a substantive governance mechanism, allowing cooler heads to prevail after orderly discussion.[7]

Left unanswered was whether McNeill could have enforced the voting agreement against Ropko and Burdi had proper procedure been followed. While agreements constraining a director's voting rights have been invalidated on public policy grounds for Delaware corporations,[8] LLCs have more leeway to structure and order their affairs by contract as the parties see fit.[9] The propriety of an

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[4] *See Ropko et al.*, 2026 WL 732727, at *7-9.

[5] *See id.* at *9.

[6] *See id.* *10.

[7] *See id.* ("A meeting of the Managing Board among McNeill, Ropko, and Burdi would have allowed McNeill to explain the reasons behind the proposed removal. More important, it would have allowed Ropko and Burdi to argue against their removal before any formal action was taken.").

[8] *See, e.g.*, *W. Palm Beach Firefighters' Pension Fund v. Moelis & Co.*, 311 A.3d 809, 847 (Del. Ch. Feb. 23, 2024) (stating that "[a] promise by a fiduciary to violate his fiduciary duty or a promise that tends to induce such a violation is unenforceable on grounds of public policy." (internal citations omitted)).

[9] Delaware courts have consistently recognized that LLCs "are creatures of contract." *TravelCenters of Am., LLC v. Brog*, 2008 WL 1746987, at *1 (Del. Ch. Apr. 3, 2008). The Delaware LLC Act is "grounded on principles of freedom of contract." *Haley v. Talcott*, 864 A.2d 86, 96 (Del. Ch. Dec. 16, 2004).

LLC voting agreement could turn on whether it requires the board member to violate his or her fiduciary duties,[10] a hypothetical question for another day.

Change-of-Control Conditions Must Be Satisfied

Fortis arose from Krafton, Inc.'s purchase of Unknown Worlds Entertainment—a video-game studio best known for "Subnautica"—for a $500 million cash payment plus up to a $250 million contingent earn-out. The acquisition agreement guaranteed that Unknown Worlds' founders—Charlie Cleveland (Franchise Creative Director), Max McGuire (Special Projects Director) and CEO Ted Gill—would retain operational control post-acquisition[11] and could only be terminated for "Cause," defined as an intentional act of fraud or dishonesty, a felony conviction, gross misconduct, or wrongful disclosure of trade secrets.

As Unknown Worlds prepared to launch Subnautica 2, tensions escalated: Krafton began locking Unknown Worlds out of its publishing platform. In mid-2025, Krafton terminated the three founders, first citing lack of game readiness and then later claiming that the founders had entered semi-retirement and improperly downloaded company data. In response, Fortis Advisors, LLC, as the representative of Unknown Worlds' former shareholders, filed suit against Krafton, seeking breach of contract damages and specific performance to restore the founders' control.

The Court (Hon. Lori W. Will) held that Krafton materially breached the acquisition agreement by terminating the founders without the contract-mandated "Cause" and by unlawfully usurping the operational control that the agreement had expressly granted the key employees (Cleveland, McGuire, and Gill) so long as at least one remained employed.[12] The Court held that Krafton's stated reasons did not satisfy the contract-defined "Cause" and were pretextual.[13] Accordingly, the Court granted specific performance, reinstating Gill as CEO with full authority and extending the earn-out period to compensate for the period of wrongful termination.

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[10] *See Wagner v. BRP Grp., Inc.*, 316 A.3d 826, 851-74 (Del. Ch. 2024) (invaliding provision in a stockholders' agreement mandating a corporation's board of directors to seek "preapproval" from a certain class before certain board actions and holding that the stockholders' agreement violated "the corporation's internal governance arrangement"); *Obeid v. Hogan*, 2016 WL 3356851, at *6 (Del. Ch. June 10, 2016) ("If the drafters have opted for a manager-managed entity, created a board of directors, and adopted other corporate features, then the parties to the agreement should expect a court to draw on analogies to corporate law.").

[11] The founders of Unknown Worlds Entertainment were contractually guaranteed to maintain operational control post-acquisition in "all material respects" during the earn-out period—provided that they remain employed. *See Fortis Advisors, LLC*, 2026 WL 730977 at *6.

[12] *See id.* at *17-32.

[13] *See id.* at *19 (stating that neither of Krafton, Inc.'s rationales for the terminations constituted "an act of dishonesty"—"[t]he role changes were transparent maneuvers rather than deliberate acts of deception" and "[t]he data downloads were protective measures, lacking the requisite intent to deceive").

Fortis demonstrates the Delaware courts' refusal to let a party evade the limits of a contractual bargain by concocting pretext or mischaracterizing the facts. When Krafton bought Unknown Worlds, it agreed to preserve the founders' operational control and to pay the earn-out, with termination only permitted for narrowly defined "Cause"—such as intentional fraud or dishonesty—set out in the acquisition agreement. The Court rejected Krafton's attempt to recast its after-the-fact dissatisfaction as a justification for seizing control beyond what the agreement permitted.

Structural Gaps, Deadlock, and Dissolution Risk

In re Priority Responsible Funding LLC concerned Priority Responsible Funding, LLC ("PRF"), a Delaware limited liability company formed to finance litigation, with two equal co-managing members: Priority Pre-Settlement Funding LLC ("PPSF") (founded by Brett Findler), and Gard Family Office LLC ("GFO"). The LLC agreement vested all management authority in the two members and required their unanimous consent for any action.

The co-managing members' relationship broke down after a series of business and personal disputes. PRF's funding pipeline stalled, and existing cases performed poorly, prompting Findler to seek a salary increase. GFO refused, citing lack of profitability and weak underwriting. Negotiations over the operating budget grew contentious, communication ceased, GFO stopped funding PRF, and GFO-controlled funds terminated their contracts with PRF, leaving the LLC largely inoperative and financially unstable.

Following these events, GFO initiated a petition for statutory dissolution of PRF, winding up of the company, and appointment of a liquidation trustee. In response, PPSF and Findler filed counterclaims, alleging that GFO breached its fiduciary duties, violated the PRF LLC agreement (including distribution and business-purpose provisions), and tortiously interfered with PPSF's business relationships.

The Court (Hon. Nathan A. Cook) granted the petition for statutory dissolution[14] and winding up because the LLC's operating agreement required unanimous consent and provided no mechanism to resolve a 50/50 stalemate.[15] The Court rejected PPSF's alleged breaches of fiduciary duty and the LLC agreement, and claims of tortious interference, finding that the shift in the LLC's business

[14] *See* 6 *Del. C.* Section 18-802 ("On application by [ ] [ ] a member or manager . . . may decree dissolution of a limited liability company whenever it is not reasonably practicable to carry on the business in conformity with a limited liability company agreement.").

[15] *See In re Priority Responsible Funding LLC*, 2026 WL 674490, at *1.

model was undertaken with Findler's informed consent, that there was no contractual obligation to make distributions, and that PPSF's acquiescence barred a breach claim.[16]

The decision illustrates the consequences when parties fail to effectively allocate control in an LLC's governing document. While a co-equal management structure may have been attractive at the outset of GFO and PPSF's joint venture, it had dire consequences when the relationship soured. Unable to agree on any matter, operations ground to a halt. Because the operating agreement lacked a tiebreaker and GFO (which sought dissolution) engaged in no actionable misconduct, the result was dissolution.

Synthesis: Enforcing the Consequences of the Bargain

The common thread in *Ropko*, *Fortis*, and *In re Priority* is the Court of Chancery's unwavering enforcement of the parties' original contractual framework. In each case, the factual backdrop shifted—McNeill tried to dismiss Ropko and Burdi, Krafton sought to terminate Unknown Worlds' founders to dodge a $250 million earn-out payment, and the co-managers of PRF deadlocked over salary and strategy. Yet the dissatisfied parties sought to recast the parties' agreement and their counterparties' conduct, rather than renegotiate.

The Court uniformly rejected those reinterpretations and applied the plain language of the parties' contract. It refused to expand contractually granted authority, stretch conditions for a change-in-control, and rescue parties from the results of silence. These decisions reinforce that, when control and governance are at stake, parties are bound by their original bargain, not the deal they wish they had made.

Practical Takeaways

Taken together, *Ropko*, *Fortis*, and *In re Priority* underscore several practical lessons for parties negotiating governance arrangements—especially where control and decision-making authority may ultimately be scrutinized in litigation.

- ***Authority must be explicit.*** A voting agreement does not equal unilateral decision-making, especially when board action is implicated. Formal governance processes must be followed.[17]

[16] *See id.* at *10-22.

[17] "Both formality and the group dynamics of board action are important in corporate law." *Cellular Info. Sys., Inc. v. Broz*, 663 A.2d 1180, 1186 (Del. Ch. 1995) (internal citations omitted).

- ***Contractual conditions that affect control are strictly enforced.*** Courts will examine whether the defined threshold (*e.g.*, "Cause") for a change of control is actually satisfied. Precise contractual language governs, and definitions matter.
- ***Pretextual attempts to alter control will fail.*** Each decision shows the Court scrutinizing the full post-trial record, including motivations, such as a party's desire to avoid a costly earn-out. After-the-fact justifications unsupported by the record will be rejected.
- ***Failure to plan for deadlock can lead to dissolution.*** Co-equal governance may look attractive initially as a means of cinching the deal, but relationships can sour. Agreements should include tiebreakers, or contemplate other mechanics, in the event of an impasse, or else risk dissolution down the road.
- ***Delaware enforces the deal as written.*** When control and governance hang in the balance, Delaware looks to the parties' contract, as it was originally agreed and understood. Attempts to reshape the contract will be rejected, underscoring the importance of careful drafting—and consideration of potential future contingencies—at the outset.

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