SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION
DOCKET NO. A-2947-20

LAWRENCE B. SEIDMAN
and ARTHUR WEIN,

Plaintiffs-Respondents/
Cross-Appellants,

v.

SPENCER SAVINGS BANK,
S.L.A., JOSE B. GUERRERO,
PETER J. HAYES, NICHOLAS
LORUSSO, BARRY MINKIN,
and ALBERT D. CHAMBERLAIN,

Defendants-Appellants/
Cross-Respondents.

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Argued October 4, 2022 – Decided November 29, 2022

Before Judges Gilson, Rose, and Gummer.

On appeal from the Superior Court of New Jersey, Chancery Division, Passaic County, Docket No. C-000025-19.

Sean Mack argued the cause for appellants/cross-respondents (Pashman Stein Walder Hayden, PC,

attorneys; Janie Byalik, Timothy P. Malone and Darcy Baboulis-Gyscek, on the briefs).

Peter R. Bray argued the cause for respondents/cross-appellants (Bray & Bray, LLC, attorneys; Peter R. Bray on the briefs).

PER CURIAM

For almost two decades, Lawrence Seidman has sought to become a director of Spencer Savings Bank, S.L.A. (the Bank or Spencer). The Bank's chief executive officer (CEO) and board of directors (the Board) have opposed Seidman's efforts. The disputes between Seidman and the Board have engendered multiple litigations and five prior appeals.

This appeal arises out of the Board's plans to convert the Bank from a mutual savings and loan association to a mutual savings bank. Plaintiffs Seidman and Arthur Wein claim that the conversion plan was another effort to entrench the CEO and the Board. The Board contends that the conversion is necessary for the Bank's growth and profitability. Following a trial, the chancery court found that the Board's primary reason for adopting the conversion plan in 2019 was to prevent Seidman and Wein from becoming directors of the Bank. Accordingly, the chancery court invalidated the Board's February 21, 2019 conversion resolution and held that five of the directors had violated their fiduciary duties.

The Bank and the directors appeal from the final judgment and several pretrial orders. Seidman and Wein cross-appeal from the portions of the final judgment that rejected their claim that they were pursuing this action derivatively on behalf of the Bank and the elimination of a requirement to appoint an independent counsel to review any future efforts to convert the Bank.

Having considered the arguments raised in both the appeal and cross-appeal, we discern no reversible error. The chancery court's factual findings are supported by substantial credible evidence, and its legal conclusions are supported by the governing law. Accordingly, we affirm.

I.

The Bank is a mutual savings and loan association established under the New Jersey Savings and Loan Act (the S&L Act), N.J.S.A. 17:12B-1 to -319. The S&L Act provides that depositors and borrowers are members of a mutual savings and loan association, and those members elect the association's directors. N.J.S.A. 17:12B-63; N.J.S.A. 17:12B-74. The board of directors in turn oversees the management of the association. N.J.S.A. 17:12B-62.

The Bank has seven directors each of whom is elected to three-year staggered terms. There are two ways to become a director of Spencer. Under one procedure, the Board's nominating committee chooses a candidate who then

stands for election by the membership. Under the second procedure, a person must obtain the support of a certain percentage of the eligible members to be nominated to stand for election. To date, no one has ever obtained a seat on Spencer's Board through the second method of nomination.

Jose Guerrero is the Bank's CEO and Chairman of the Board. Guerrero has been elected to his positions by the directors since 2006. His annual compensation exceeds $2 million. All the Bank's current directors were invited to be members of the Board by Guerrero. In 2014, the Board voted on and adopted a bylaw that provides if Guerrero is not re-elected to the Board, an eighth director position must be created, and Guerrero must be appointed to it.

Seidman is an attorney and a money manager. Through his business, he has a controlling interest in several banks, and he has served on the boards of eleven banks. Since 2004, Seidman has sought to become a director of Spencer. He has also sought to have associates, including Wein, become directors.

Seidman's efforts to secure a Board seat and the existing directors' opposition to those efforts has spawned multiple litigations and appeals. See Seidman v. Spencer Sav. Bank, S.L.A., Nos. A-2039-17, A-4739-17 (App. Div. Oct. 3, 2019) (slip op. at 3 n.2) (summarizing the four appeals before this court from 2006 to 2015). Those prior litigations have primarily involved Seidman's

repeated challenges to the Bank's bylaws, which had established various minimum percentages of membership support for a member-initiated nomination to become a director.

In the prior litigations, Seidman contended that the Bank's CEO and directors were entrenched, had mismanaged the Bank, and had reaped excessive compensation. The Bank and its directors argued that the Bank has been a well-run community bank and Seidman is trying to gain control of the Bank to change how it operates and to achieve personal gain. In several of those prior litigations, we have affirmed rulings striking the Board's changes to the bylaws that required a high percentage of membership support for a member-initiated nomination. Ibid.

In 2017, and against the backdrop of the ongoing litigations with Seidman, the Board considered converting the Bank to a New Jersey mutual savings bank. Mutual savings banks are governed by a board of managers, who elect their own successors. N.J.S.A. 17:9A-188(A) and (D). In other words, if Spencer converted to a New Jersey mutual savings bank, its members would no longer vote for the directors.

Spencer maintains that there are sound business reasons for converting its charter. Savings and loan associations (S&L associations) generally engage in

residential lending. See N.J.S.A. 17:12B-12. Under federal law, an S&L association is required to have at least sixty-five percent of its lending portfolio consist of qualified thrift investments, which are mainly residential mortgages. 12 U.S.C. § 1467a(m) (the QTL requirement).

Spencer contends that its commercial lending is generally more profitable than its residential-mortgage lending because commercial loans have higher interest rates and are shorter in duration. Since the early 2000s, Spencer has expanded its commercial lending. For example, Spencer's commercial loans increased from approximately $14.6 million in 2004 to $219 million in 2018. Spencer also contends that the QTL requirement will restrict its ability to expand its commercial loan portfolio and its profitability. Thus, the Board maintains it considered converting the Bank so that it would not be subject to the QTL requirement.

In 2017, Guerrero asked the Bank's then-executive vice president and strategic planning officer and treasurer, Robert Peacock, and its outside regulatory attorney, Douglas Faucette, to prepare various memos on the Bank's strategic options. After several drafts, the final 2017 Faucette memo analyzed the option of converting the Bank to a New Jersey mutual savings bank. A memo from Peacock also discussed the strategic advantages of a savings bank

charter. Both memos pointed out that if Spencer converted to a mutual savings bank, it would not be subject to the QTL requirement. The Faucette memo also noted that a mutual savings bank is governed differently than an S&L association.

In June 2017, the Board approved a resolution to convert Spencer to a New Jersey mutual savings bank. The Board subsequently revoked the 2017 conversion resolution in February 2018. The Bank contends that it was preoccupied with an acquisition in 2017 and 2018 and, therefore, the 2017 conversion resolution became stale.

In July 2018, the Bank amended its bylaws, including Section 34, which concerns members' voting rights. Before that amendment, Section 34 provided that each member had one vote. That bylaw was then changed so that members with larger deposit account balances were given more votes.

The Board again considered converting the Bank's charter in early 2019. In preparation for that consideration, the Bank's first vice president and chief operating officer, Jane Rey, prepared a memo on the potential conversion. Faucette also updated his 2017 memo. On February 21, 2019, the Board held a meeting and adopted a resolution to convert the Bank to a New Jersey mutual savings bank (the 2019 Conversion Resolution).

Following the Board's adoption of the 2019 Conversion Resolution, the Bank sent proxy materials to all its members giving notice of a vote on the conversion and providing them with information explaining the conversion. Among other things, the materials stated that for the conversion plan to pass, two-thirds of the members voting at a special meeting would have to vote in favor of the conversion.

In March 2019, Seidman and Wein sued the Bank and five of its existing directors claiming that (1) the proxy materials were misleading; (2) any vote should take place with one vote per member; (3) the Board's actions were motivated by entrenchment; and (4) the directors should not be permitted to continue in their positions.

Shortly after the complaint was filed, the chancery court enjoined the Bank from moving forward with a vote on the conversion. Thereafter, the Bank cancelled its special meeting and agreed not to use the proxy materials challenged by plaintiffs. The Bank and directors then moved to dismiss the complaint contending, among other things, that the claims were moot.

On October 21, 2019, the chancery court denied the Bank's and directors' motion and found that the issues raised by the complaint were not moot. The court read the complaint as requesting new and changed proxy materials for the

special meeting and recognized that, because the special meeting had been enjoined, the issue was technically moot. The court explained, however, that proxy materials would be used to inform the Bank's members of the conversion and the dissemination of those materials was likely to reoccur if the injunction on the special meeting was lifted. Consequently, the court found this issue was one of substantial importance capable of evading review and declined to dismiss it as moot.

The Bank and directors then moved for reconsideration, and on January 10, 2020, the chancery court issued an order granting in part and denying in part that motion. The court found that the challenge to the proxy materials was moot, but that it should still determine whether the Bank's reasons for the proposed conversion were designed to entrench the directors. The court also dismissed count four of the complaint because the relief requested could be provided only by the Commissioner of Banking.

In May 2020, the chancery court conducted a five-day trial. During trial, the court heard testimony from six directors, including Guerrero, Rey, the Bank's chief financial officer Steven Fusco, Faucette, Seidman, as well as experts called by plaintiffs and defendants. Wein's deposition testimony was also presented at trial.

On July 31, 2020, the chancery court issued a written opinion announcing it rulings. The court found that in approving the 2019 Conversion Resolution, the directors primarily acted to entrench their positions and, therefore, they were not acting in the Bank's best interest. In making that finding, the chancery court assessed Guerrero's and the directors' credibility and found all of them incredible in their claim that preventing Seidman from becoming a director was not a motivating factor in the conversion vote. Contrary to their testimony, the court found that Guerrero and the existing Board members were primarily motivated by their desire to stop Seidman from becoming a member of the Board. The court also found plaintiffs had brought the suit as a direct suit supporting their own interests compared to a derivative suit on behalf of all members. The chancery court then announced that it would (1) invalidate the 2019 Conversion Resolution; (2) invalidate the amendment to Section 34 of the Bank's bylaws; (3) declare that Guerrero and four other directors had violated their fiduciary duties to the Bank and its members; (4) deny plaintiffs' request for a permanent injunction but direct that an independent outside attorney be appointed to review any future conversion plan; and (5) award plaintiffs attorney's fees.

All parties moved for reconsideration. The defendants sought reconsideration of the appointment of an independent counsel and award of

attorney's fees to plaintiffs, and for an explanation of the rejection of their advice of counsel defense. Plaintiffs sought reconsideration of the court's finding that they had not pursued the action derivatively.

On April 29, 2021, the chancery court issued an order and written statement of reasons granting in part and denying in part the motions for reconsideration. The court determined that the requirement for an independent attorney was inappropriate and, accordingly, vacated that requirement. The court rejected the directors' reliance on the advice of counsel and iterated its determination that the directors did not rely on the advice of counsel in adopting the 2019 Conversion Resolution. The court also rejected plaintiffs' claim that they had brought the action derivatively and vacated the award of attorney's fees.

On June 21, 2021, the chancery court entered a final judgment. In that judgment, the court (1) invalidated the 2019 Conversion Resolution; (2) invalidated the July 2018 amendment to Section 34 of the Bank's bylaws; (3) declared that Guerrero and four other directors had violated their fiduciary duties; (4) denied plaintiffs' request for an award of attorney's fees and costs; (5) vacated its temporary restraining order; (6) denied plaintiffs' request for a permanent injunction to prevent the Bank from converting to a mutual savings bank; and (7) dismissed with prejudice all other claims.

Defendants now appeal. Plaintiffs cross-appeal.

II.

On their appeal, defendants argue that the chancery court erred in (1) denying their motion to dismiss the case as moot; (2) concluding that the evidence established entrenchment; (3) concluding that the Board's primary motivation for voting to convert the Bank was to entrench the Board members in their positions; and (4) invalidating the 2018 change to the Bank's voting bylaw.

Plaintiffs, on their cross-appeal, raise two issues, arguing that the chancery court erred in (1) determining that they were not pursuing the action derivatively on behalf of all members; and (2) vacating the requirement for an independent attorney to review any future conversion plan.

Having reviewed the arguments in light of the evidence at trial and the governing law, we are not persuaded by any of the arguments. The chancery court heard the testimony of the witnesses, considered the evidence presented, and made factual, credibility, and legal findings. The key factual finding was that in 2019 the directors voted to convert the Bank to a mutual savings bank with the primary motive to entrench their positions and prevent Seidman and his associates from becoming directors. That finding was amply supported by

substantial credible evidence presented at trial and is consistent with the governing law.

A. Mootness.

"Mootness is a threshold justiciability determination rooted in the notion that judicial power is to be exercised only when a party is immediately threatened with harm." Stop & Shop Supermarket Co. v. County of Bergen, 450 N.J. Super. 286, 291 (App. Div. 2017) (quoting Betancourt v. Trinitas Hosp., 415 N.J. Super. 301, 311 (App. Div. 2010)). Courts "'normally will not entertain cases when a controversy no longer exists and the disputed issues have become moot.'" Int'l Brotherhood of Elec. Workers Loc. 400 v. Borough of Tinton Falls, 468 N.J. Super. 214, 224 (App. Div. 2021) (quoting De Vesa v. Dorsey, 134 N.J. 420, 428 (1993)). Further, our courts generally "'do not resolve issues that have become moot due to the passage of time or intervening events.'" Wisniewski v. Murphy, 454 N.J. Super. 508, 518 (App. Div. 2018) (quoting State v. Davila, 443 N.J. Super. 577, 584 (App. Div. 2016)).

"An issue is 'moot when our decision sought in a matter, when rendered, can have no practical effect on the existing controversy.'" Redd v. Bowman, 223 N.J. 87, 104 (2015) (quoting Deutsche Bank Nat'l Tr. Co. v. Mitchell, 422 N.J. Super. 214, 221-22 (App. Div. 2011)). Nevertheless, appellate courts will

decide moot issues "where the underlying issue is one of substantial importance, likely to reoccur but capable of evading review." Wisniewski, 454 N.J. Super. at 519 (quoting Zirger v. Gen. Accident Ins. Co., 144 N.J. 327, 330 (1996)).

The Bank and directors argue that the challenge to the 2019 Conversion Resolution was moot because before trial they cancelled the special members meeting to vote on the plan and they withdrew and agreed not to use the challenged proxy materials. The chancery court found that plaintiffs' challenge to the withdrawn proxy materials was moot. The court also found, however, that the challenge to the 2019 Conversion Resolution was not moot. We discern no error in that ruling.

The directors did not vacate their 2019 Conversion Resolution. Instead, they cancelled the special meeting to vote on that conversion plan. Consequently, the 2019 Conversion Resolution itself was not withdrawn and, thus, was not moot.

A theme that underlies the Bank's and directors' arguments on this appeal is that the ruling on the motive for the 2019 Conversion Resolution should not be forever binding. We agree with that general point. Any future resolution to convert the Bank, if challenged, will need to be assessed based on the facts and circumstances at the time of the future vote. Nevertheless, that the chancery

court found that the vote taken in February 2019 was primarily motivated to entrench the existing Board and to prevent Seidman and his associates from becoming Board members would not be irrelevant to that assessment. In other words, although the passage of time and change of circumstances may establish that a future vote on conversion was motivated by appropriate reasons, the history of the Board's past actions is still a relevant consideration.

B. The Finding of Entrenchment.

In their second and third arguments, defendants contend that the chancery court erred as a matter of law in finding entrenchment and that the finding of entrenchment was against the weight of the evidence. We reject both arguments.

An appellate court's review of a trial court's findings of facts is limited. Seidman v. Clifton Sav. Bank, S.L.A., 205 N.J. 150, 169 (2011). "We may not overturn the trial court's factfindings unless we conclude that those findings are 'manifestly unsupported' by the 'reasonably credible evidence' in the record." Balducci v. Cige, 240 N.J. 574, 595 (2020) (quoting Seidman, 205 N.J. at 169). Appellate courts give particular "defer[ence] to the credibility determinations made by the trial court because the trial judge 'hears the case, sees and observes the witnesses, and hears them testify,' affording it 'a better perspective than a reviewing court in evaluating the veracity of [witnesses].'" Gnall v. Gnall, 222

N.J. 414, 428 (2015) (quoting Cesare v. Cesare, 154 N.J. 394, 412 (1998)). In contrast, "[a] trial court's interpretation of the law and the legal consequences that flow from established facts are not entitled to any special deference." Rowe v. Bell & Gossett Co., 239 N.J. 531, 552 (2019) (alteration in original) (quoting Manalapan Realty, L.P. v. Twp. Comm. of Manalapan, 140 N.J. 366, 378 (1995)).

"A successful claim of entrenchment requires [plaintiffs] to prove that the defendant directors engaged in action which had the effect of protecting their tenure and that the action was motivated primarily or solely for the purpose of achieving that effect." Scheidt v. DRS Techs., Inc., 424 N.J. Super. 188, 202 (App. Div. 2012) (quoting Benihana of Tokyo, Inc. v. Benihana, Inc., 891 A.2d 150, 186 (Del. Ch. 2005), aff'd, 906 A.2d 114 (Del. 2006)). "The fact that a plan has an entrenchment effect, however, does not mean that the board's primary or sole purpose was entrenchment." Benihana, Inc., 891 A.2d at 186. Nevertheless, "[w]here a board's actions are shown to have been taken for the purpose of entrenchment, they may not be permitted to stand." Ibid.

After considering all the evidence presented at trial, the chancery court found that the primary motivation of the directors in voting for the 2019 Conversion Resolution was to prevent Seidman and his associates from

becoming directors and to entrench their own positions. In making that finding, the chancery court considered the testimony of six directors, including Guerrero, and found that all the directors were not credible. In other words, the chancery court rejected the directors' arguments that they were relying on the advice of Bank executives and the Bank's regulatory attorney. The chancery court also rejected the directors' contention that they were focused on avoiding the QTL requirement and were voting in favor of conversion for legitimate business judgment reasons.

We see no basis to reject the credibility findings made by the chancery court. The trial record includes substantial credible evidence supporting the chancery court's finding of entrenchment. Finally, we discern no reversible error in the chancery court's application of its factual findings to the law of entrenchment.

Defendants make a series of arguments that the chancery court erred in finding entrenchment. First, they point out that the chancery court made fact findings that the Bank had legitimate reasons to convert to a mutual savings bank. In that regard, they cite the chancery court's findings concerning the Bank's history of increasing its commercial lending and the limitation on commercial lending imposed by the QTL requirement. The directors also point

out that the chancery court found Rey and Faucette to be credible witnesses and that the memos they had authored set forth legitimate business reasons for the conversion.

None of those findings by the chancery court undercut its ultimate finding that the directors voted for the 2019 Conversion Resolution to prevent Seidman and Wein from becoming Board members and to entrench their own positions. There is nothing inconsistent with the chancery court recognizing and acknowledging the legitimate business interests of the Bank in converting to a mutual savings bank but also finding that that was not the directors' primary motivation.

Next, defendants argue that the chancery court made no findings that the Board acted to fortify their positions. That argument mischaracterizes the chancery court's findings. The chancery court found that the Board was motivated to prevent Seidman and his associates from becoming directors. The chancery court also found the corollary fact that in so acting, the directors were at the same time entrenching their own positions.

Defendants also argue that Seidman's goal in becoming a director is against the interest of the Bank. They contend that Seidman is seeking to change how the Bank operates or sell the Bank for his own personal profit. Defendants,

therefore, argue that they had legitimate reasons to oppose Seidman's efforts. The Bank and directors made those same arguments to the chancery court, but the court did not find that those reasons were the motivating considerations in the vote for the 2019 Conversion Resolution.

In addition, defendants contend that a successful claim of entrenchment requires a showing that the directors put in place rules that protected their positions. They argue that they only voted in favor of a resolution and the resolution would become effective only if approved by two-thirds of the voting members. We reject that contention because the action being challenged is the Board's adoption of the 2019 Conversion Resolution.

Defendants also contend that the chancery court erred in taking judicial notice of the prior litigations between Seidman and the Bank and the chancery court improperly used those litigations as the grounds for finding entrenchment. We reject that argument as another mischaracterization of the chancery court's actual findings. The court appropriately noted the prior litigations, but it did not make its ultimate finding of entrenchment based on those litigations. Instead, as already noted, it assessed the credibility of the directors, found them incredible, and found that they were acting to entrench themselves.

Finally, defendants argue that the chancery court improperly rejected their defense of reliance on the advice of counsel. As already noted, the chancery court acknowledged the advice provided by regulatory counsel, Faucette, as well as the advice provided by Rey, a senior executive at the Bank. The chancery court also acknowledged that Faucette and Rey set forth legitimate business reasons for the conversion. Based on the testimony of the directors, however, the chancery court found that the directors were not relying on the advice of Faucette or Rey; rather, they voted in favor of the 2019 Conversion Resolution to entrench their positions by preventing Seidman and his associates from supplanting them as directors.

In short, in all their arguments defendants ignore the central factual finding of entrenchment by the chancery court. To the extent that we have not expressly addressed other arguments raised by defendants, it is because those arguments either disregard that central factual finding or lack sufficient merit to warrant discussing in a written opinion. See R. 2:11-3(e)(1)(E).

C. The Change to Section 34 of the Bank's Bylaw Effecting Member Voting.

Before 2018, Section 34 of the Bank's bylaws provided that each account holder had one vote. In July 2018, the directors amended Section 34 so that a member received one vote for each $100 on deposit up to a maximum of 1,000

votes. Accordingly, after that change, members with large amounts of money on deposit had more votes than members with small amounts of money on deposit. The S&L Act allows for both types of voting by members. N.J.S.A. 17:12B-126.

Based on the evidence at trial, the chancery court found that the amendment of the voting bylaw in July 2018 was made in furtherance of the directors' motive to entrench themselves. The Bank and directors argue that the chancery court's finding was in error for two reasons. First, they contend that the change in the voting bylaw did not protect their positions as directors. Second, they argue that adopting one of two statutory methods for member voting does not demonstrate entrenchment.

The chancery court's finding was based on substantial credible evidence presented at the trial. Rey acknowledged that the change in Section 34 of the bylaws would make it easier to secure a vote on the conversion. That evidence, coupled with the chancery court's finding that the directors voted for the 2019 Conversion Resolution to entrench themselves, supports the chancery court's finding on the change in the member voting bylaw. We note that, like the 2019 Conversion Resolution vote, nothing prevents the directors from voting to change the bylaws in the future. Like any future vote on conversion, the motive

for any future change to the bylaws will need to be assessed based on the facts and circumstances surrounding the change when it is made.

D. The Finding that Plaintiffs Did Not Bring the Action Derivatively.

Plaintiffs argue the chancery court erred in determining that they were not pursuing this action derivatively on behalf of the Bank's members. In that regard, plaintiffs contend their claims have nothing to do with securing a position on the Board; instead, they maintain the relief they sought benefited all the Bank's members equally. Plaintiffs also argue the court erred in declining to revise its determination on reconsideration. We reject both arguments.

Appellate courts review a trial court's decision on a motion for reconsideration for an abuse of discretion. Branch v. Cream-O-Land Dairy, 244 N.J. 567, 582 (2021). "We will not disturb the trial court's reconsideration decision 'unless it represents a clear abuse of discretion.'" Kornbleuth v. Westover, 241 N.J. 289, 301 (2020) (quoting Hous. Auth. of Morristown v. Little, 135 N.J. 274, 283 (1994)). "An abuse of discretion 'arises when a decision is made without a rational explanation, inexplicably departed from established policies, or rested on an impermissible basis.'" Id. at 302 (quoting Pitney Bowes Bank, Inc. v. ABC Caging Fulfillment, 440 N.J. Super. 378, 382

(App. Div. 2015) (quoting Flagg v. Essex Cnty. Prosecutor, 171 N.J. 561, 571 (2002))).

"[A] shareholder derivative action permits a shareholder to bring suit against wrongdoers on behalf of the corporation, and it forces those wrongdoers to compensate the corporation for the injury they have caused." In re PSE & G S'holder Litig., 173 N.J. 258, 277 (2002) (citation omitted). "[T]he cause of action actually belongs to the corporation, but a shareholder is permitted to assert the cause of action where the corporation has failed to take the action for itself." Id. at 278 (citation omitted). Thus, to maintain a derivative action, the shareholder must "fairly represent the interests of the shareholders or members similarly situated in enforcing the right of the corporation or association." R. 4:32-3. By contrast, a direct action involves a "special injury" suffered by a particular shareholder. See Delray Holding, LLC v. Sofia Design & Dev. at S. Brunswick, LLC, 439 N.J. Super. 502, 510 (App. Div. 2015). That is, "a direct action is one in which liability is based upon an injury or violation of a duty owed to a particular shareholder." Tully v. Mirz, 457 N.J. Super. 114, 124 (App. Div. 2018).

A claim of entrenchment can state "either a direct or derivative claim, depending on whether the entrenchment affects shareholders unequally."

Strasenburgh v. Straubmuller, 146 N.J. 527, 552 (1996). Here, the chancery court concluded plaintiffs did not bring this action derivatively and affirmed that determination on reconsideration. The court found plaintiffs' injuries were unique because they were seeking positions on the Board, something that the entirety of the Bank's membership was not seeking to do. The court further found plaintiffs were motivated by self-interest and that their allegations concerned an impingement upon their right to vote their "shares" in a way to become Board members.

These findings are supported by substantial credible evidence, and we discern no reversible error in the chancery court's application of those findings to the law of direct and derivative actions. Further, we find no clear abuse of discretion in the court's reconsideration decision. To the extent plaintiffs seek to analogize this case to the previous lawsuits in these marathon litigations, which were deemed derivative, we reject that analogy. The previous lawsuits dealt with adopted bylaws that impacted threshold nominations to the Board. Here, by contrast, the decision to convert had not yet been ratified or approved by the Bank's members.

E. The Appointment of Independent Counsel.

On defendants' motion for reconsideration, the chancery court vacated the portion of its decision that provided for the appointment of independent outside counsel to review any future conversion plan. Plaintiffs argue the court erred in vacating that provision because the court had jurisdiction and authority to impose that requirement. We disagree.

The chancery court vacated the independent-counsel requirement after finding it was not within the scope of relief sought by plaintiffs. The court also recognized that the imposition of ongoing court supervision is an extreme remedy and concluded there was no justifiable basis for the imposition of the requirement. Reconsideration is left to the sound discretion of the trial court, and we discern no clear abuse of discretion in the chancery court's decision to vacate the independent-counsel requirement it had imposed instead of an injunction. See Kornbleuth, 241 N.J. at 301; Pitney Bowes Bank, Inc., 440 N.J. Super. at 382.

F. In Summary.

We affirm the chancery court's decisions, which were supported by substantial credible evidence and are consistent with the governing law. We

also discern no abuse of discretion in the chancery court's reconsideration decisions.

Affirmed.

I hereby certify that the foregoing
is a true copy of the original on
file in my office.

CLERK OF THE APPELLATE DIVISION