IN THE SUPERIOR COURT OF THE STATE OF DELAWARE

MAGELLAN PIPELINE CO., L.P.,	)	
	)	
Plaintiff,	)	
v.	)	**C.A. No. N25C-02-418 PRW**
	)	**CCLD**
SUNCOR ENERGY (U.S.A.) INC. and,	)	
SUNCOR ENERGY INC.,	)	
	)	
Defendants.	)	

Submitted: November 20, 2025
Decided: February 26, 2026
Issued: March 18, 2026*

Upon Defendant Suncor Energy (U.S.A.) Inc.'s
Motion for Partial Dismissal Under Rule 12(b)(6),
GRANTED in part and DENIED in part.

Upon Defendant Suncor Energy Inc.'s
Motion to Dismiss for Lack of Personal Jurisdiction Under Rule 12(b)(2),
DENIED.

MEMORANDUM OPINION AND ORDER

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WALLACE, J.

This is an action for breach of contract and breach of the duty of good faith and fair dealing. Suncor Energy U.S.A. Inc. ("Suncor") contracted with Magellan Pipeline Company, L.P. for, among other things, storage services for Suncor's petroleum products. Specifically, the parties entered the Terminalling Agreement, governed by Colorado law, and the Ethanol Agreement, governed by Oklahoma law. Simultaneously with the execution of these contracts, Suncor's parent corporation, Suncor Energy Inc. ("Suncor Canada"), executed the Parent Guaranty to guarantee Suncor's payment obligations.

Subsequently, Suncor ordered Magellan to stop work under those specific agreements. Magellan demanded payment, alleging that Suncor had breached them. When Suncor didn't pay, Magellan sought payment from Suncor Canada. Suncor Canada also didn't make payment.

Magellan brought this suit asserting five counts: (1) breach of the Terminalling Agreement against Suncor; (2) breach of the Ethanol Agreement against Suncor; (3) breach of the Terminalling Agreement's duty of good faith and fair dealing against Suncor; (4) breach of the Ethanol Agreement's duty of good faith and fair dealing against Suncor; and (5) breach of the Parent Guaranty against Suncor Canada. Suncor has moved to dismiss for failure to state a claim,[1] and Suncor

* This decision is issued after providing the parties an opportunity to request redaction of certain confidential information—none were made—and with the Court's own necessary corrections.

Canada has moved to dismiss for lack of personal jurisdiction.[2]

For reasons now explained, the Court **GRANTS** the Suncor Motion, in part, and **DENIES** it, in part. The Court **DENIES** the Suncor Canada Motion in whole.

I. FACTUAL AND PROCEDURAL BACKGROUND

A. THE PARTIES

Plaintiff Magellan is a Delaware limited partnership with its principal place of business in Tulsa, Oklahoma.[3]

Defendant Suncor is a Delaware corporation with its principal place of business in Colorado.[4] Defendant Suncor Canada formed Suncor in June 2003.[5] And Suncor Canada is a Canadian corporation with its principal place of business in Alberta, Canada.[6] Suncor Canada is the parent company of Suncor and wholly owns Suncor.[7]

B. FACTUAL BACKGROUND

In 2015, Magellan and Suncor Canada executed a general Parent Guaranty

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1 D.I. 20 [hereinafter the "Suncor Motion"].

2 D.I. 32 [hereinafter the "Suncor Canada Motion"].

3 Compl., ¶ 2 (D.I. 1).

4 *Id.* ¶ 3.

5 Declaration Pursuant to 10 *Del. C.* § 5351, *et seq.* [hereinafter "Smith Decl."], ¶ 5 (D.I. 32). "In ruling on a Rule 12(b)(2) motion, the court may consider the pleadings, affidavits, and any discovery of record." *Ryan v. Gifford,* 935 A.2d 258, 265 (Del. Ch. 2007).

6 Compl., ¶ 4.

7 *Id.* ¶ 5.

that would cover, among other things, Suncor Canada and related entities' payment and performance in certain circumstances.[8] The Parent Guaranty doesn't specifically name the covered agreements between Magellan and Suncor.[9] Instead, it defines "Transactions" as "the transactions contemplated by tariffs, storage agreements, and other contracts . . . between [Magellan] and Company."[10] The Parent Guaranty provides that "Guarantor has entered into this Guaranty in order to induce [Magellan] to enter into Transactions with Company."[11] A Third Amendment to the Parent Guaranty added Suncor as a covered subsidiary, effective April 30, 2022.[12] New York law governs the Parent Guaranty.[13]

In December 2023, Magellan and Suncor entered into multiple contracts for the storage and transportation of Suncor petroleum products.[14] The two contracts at issue in this case are the Dupont Storage and Terminalling Agreement ("Terminalling Agreement")[15] and an amendment to their Ethanol Storage Services

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8 Compl., ¶¶ 28–35.

9 *See* Compl., Ex. C [hereinafter "Parent Guaranty"] (D.I. 1).

10 Parent Guaranty § 1.

11 *Id.* § 2.

12 *Id.*, Third Amendment, § 2 (adding Suncor to definition of "Company").

13 Compl., ¶ 35.

14 *Id.* ¶ 9.

15 *Id.*, Ex. A [hereinafter "Terminalling Agreement"] (D.I. 1).

Agreement ("Ethanol Agreement"[16] and collectively, the "Agreements").[17]

Under the Terminalling Agreement, Magellan was to build petroleum storage tanks, and Suncor would pay to use the storage space in Dupont, Colorado.[18] Magellan was also to assist in loading the petroleum products onto trucks.[19] Magellan performed none of this work in Delaware.[20] And Colorado law governs the Terminalling Agreement.[21]

Under the Ethanol Agreement, Magellan was to provide storage services for Suncor's ethanol.[22] Again, Magellan performed none of this work in Delaware.[23] Oklahoma law governs the Ethanol Agreement.[24]

Of import here, the Terminalling Agreement expressly provided that on or before its effective date Suncor was required to deliver Magellan an amendment to the Parent Guaranty that specifically included it and more than doubled the amount guaranteed.[25] That Sixth Amendment of the Parent Guaranty was executed

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16 *Id.*, Ex. B [hereinafter "Ethanol Agreement"] (D.I. 1).

17 *Id.* ¶ 9.

18 *Id.* ¶¶ 10–14.

19 *Id.* ¶ 15.

20 *See id.* ¶¶ 10–15.

21 Terminalling Agreement, "Schedule B" § 19.

22 Compl., ¶ 23.

23 *See* Ethanol Agreement, at 1 (Storage Location is in Fountain, Colorado).

24 *Id.* § 20.

25 Terminalling Agreement, ¶ IX; *id.* Ex. A.

simultaneously with the Terminalling Agreement and Ethanol Agreement.[26]

Magellan began building the tanks and did so until August 9, 2024, when Suncor instructed Magellan to cease all work in connection with the Agreements.[27] After some back and forth, Suncor provided written notice to Magellan that it "has no present intention of performing" under the Agreements and instructed Magellan to mitigate damages.[28]

Thereafter, Magellan sent Suncor a notice of default.[29] Suncor didn't cure its alleged default.[30] Magellan sent Suncor invoices for reliance and liquidated damages; Suncor didn't pay.[31] Thereafter, Magellan demanded payment from Suncor Canada; Suncor Canada also didn't pay.[32]

C. RELEVANT TERMINALLING AND ETHANOL CONTRACTUAL PROVISIONS

The provision key to the present motions is found in Terminalling Agreement Schedule B, Section 4.3, which provides:

> [I]in the event of default by customer during the first three Contract Years of this Agreement, Magellan may terminate this Agreement upon written notice to Customer and Magellan shall

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[26] Parent Guaranty, Sixth Amendment (adding the Terminalling Agreement and Capacity Lease Agreement Suncor to definition of "Transaction").

[27] *Id.* ¶¶ 36–38.

[28] *Id.* ¶ 40.

[29] *Id.* ¶ 41.

[30] *Id.* ¶ 43.

[31] *Id.* ¶¶ 45–46.

[32] *Id.* ¶¶ 48–49.

> upon such termination be entitled to recover as liquidated damages and not as a penalty, an amount equal to the then present value of the Storage Rate . . . for the Tankage for the remainder of the first three Contract Years.[33]

"Contract Year" is defined as "the 365 day period . . . beginning on the Commencement Date and each 365 day period . . . thereafter until the end of the Term."[34] "Commencement Date" is defined as "the first October 1 following at least 30 days after Magellan's delivery of written notice to Customer that the Tankage has been fully constructed and is ready for operation."[35]

The Ethanol Agreement contains the same definition of "Commencement Date," and on the Commencement Date, Magellan was required to increase its storage capacity for Suncor.[36]

D. PROCEDURAL HISTORY

Magellan filed its complaint on February 21, 2025.[37] It seeks liquidated damages for breach of the Terminalling Agreement, or in the alternative, actual damages.[38] Magellan also seeks actual damages for breach of the Ethanol

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[33] Terminalling Agreement, "Schedule B" § 4.3.

[34] *Id.*, "Schedule A" § 1.5.

[35] *Id.*, "Schedule A" § 1.4.

[36] Ethanol Agreement §§ 1–3.

[37] D.I. 1.

[38] Compl., 20.

Agreement.[39]

Suncor moved to dismiss for failure to state a claim.[40] And shortly thereafter, Suncor Canada moved to dismiss for lack of personal jurisdiction.[41] Those motions are fully briefed,[42] the Court has heard argument on each,[43] and they are now ripe for decision.

III. PARTIES' CONTENTIONS

A. PERSONAL JURISDICTION

Suncor Canada argues that, even if the Court has a statutory basis to exercise such, it would violate Suncor Canada's due process rights to subject it to Delaware's personal jurisdiction.[44] Suncor Canada states that it is a Canadian corporation with no litigation-related contacts whatsoever with Delaware.[45] It posits that merely

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[39] *Id*.

[40] Def. Suncor Energy (U.S.A.) Inc's Mot. for Partial Dismissal (D.I. 20).

[41] Def. Suncor Canada's Mot. To Dismiss for Lack of Personal Jurisdiction (D.I. 32) and Def. Suncor Canada's Br. in Supp. of Mot. to Dismiss for Lack of Personal Jurisdiction Under R. 12(b)(2) [hereinafter "Canada Br."] (D.I. 32).

[42] Def. Suncor Op. Br. in Supp. of Mot. to Partially Dismiss [hereinafter "Suncor Br."], at 11 (D.I. 20); Pl.'s Answering Br. in Opp'n to Def. Suncor Mot. for Partial Dismissal (D.I. 37) [hereinafter "Opp'n Suncor Br."]; Def. Suncor's Reply Br. in Further Supp. of Mot. to Partially Dismiss Under R. 12(b)(6) (D.I. 41) [hereinafter "Suncor Reply"]; Pl.'s Answering Br. in Opp'n to Def. Suncor Canada Mot. To Dismiss for Lack of Personal Jurisdiction Under R. 12(b)(2) (D.I. 36) [hereinafter "Opp'n Canada Br."]; Def. Suncor Canada's Reply Br. in Further Supp. of Mot. to Dismiss for Lack of Personal Jurisdiction Under R. 12(b)(2) (D.I. 42) [hereinafter "Canada Reply"].

[43] D.I. 47; D.I. 49 [hereinafter "MTD Hr'g Tr."].

[44] Canada Br., at 5.

[45] *See id*. at 8–11.

owning a Delaware subsidiary and guaranteeing its payments is insufficient to establish minimum contacts.[46] It also claims that the "Fair Play and Substantial Justice" factors further support its argument that the Court lacks personal jurisdiction.[47]

Magellan responds that Suncor Canada purposefully availed itself of Delaware laws when it created a Delaware subsidiary.[48] Further, it asserts that Suncor Canada's obligations under the Parent Guaranty create the necessary minimum contacts with Delaware.[49] Finally, Magellan insists that the fair play and substantial justice factors don't help Suncor Canada evade personal jurisdiction here.[50]

B. FAILURE TO STATE A BREACH-OF-CONTRACT CLAIM

Suncor moves to dismiss Magellan's claims for liquidated damages under the Terminalling Agreement.[51] According to Suncor, the liquidated damages provision does not apply until the parties reach a Contract Year, which is triggered by the Commencement date, which is in turn triggered by Magellan completing the tankage

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46 *See id*.

47 *Id.* at 11–13.

48 Opp'n Canada Br., at 7.

49 *Id.* at 8–12.

50 *Id.* at 13–16.

51 Suncor Br., at 11.

and providing written notice.[52] Suncor contends that, because Magellan never completed the tankage, it can't allege a default during a Contract Year, as required for liquidated damages.[53]

On the Ethanol Agreement, Suncor contends that it can't breach the applicable amendment because that amendment imposes no obligations on Suncor.[54] In Suncor's view, the amendment only provides for technical amendments to the operative agreement that come into effect on the Commencement Date, which never occurred.[55] And, says Suncor, Magellan hasn't alleged that Suncor breached the underlying agreement, just the amendment.[56]

Magellan responds that it is procedurally improper under Rule 12(b)(6) for Suncor to move dismiss just part of its prayer for alternative remedies for the alleged breach of the Terminalling Agreement.[57] On the substance, Magellan counters that Suncor prevented the condition precedent for the liquidated damages provision to apply, and thus can't claim that this failure of condition prevents Magellan's request

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52 *Id.* at 12–14.

53 *Id.* at 14.

54 *Id.* at 20.

55 *Id.* at 21.

56 *Id.* at 21.

57 Opp'n Suncor Br., at 6–8.

for liquidated damages.[58] Here, Magellan invokes the "prevention doctrine."[59]

On the Ethanol Agreement, Magellan advances that the amendment required Magellan to build increased storage capacity, and for Suncor to pay for this increased capacity.[60] Calling on the doctrine of anticipatory repudiation, Magellan suggests that it had the right to sue before Suncor actually breached any of its obligations.[61]

C. FAILURE TO STATE A CLAIM FOR BREACH OF THE IMPLIED DUTY OF GOOD FAITH AND FAIR DEALING

Suncor proposes that to state a claim for breach of the implied duty of good faith and fair dealing under Colorado law, Magellan needed to allege that a specific provision of the Terminalling Agreement provided Suncor with discretion, and that Suncor exercised that discretion in bad faith.[62] In Suncor's view, Magellan hasn't. So, Suncor proffers that Magellan has failed to state a claim.[63] With respect to the Ethanol Agreement, Suncor argues that its implied duty claim is duplicative of its breach-of-contract claim and should be dismissed under Oklahoma law.[64]

Magellan responds that, to state a claim under Colorado law, it need only

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58 *Id.* at 9–17.

59 *Id.* at 9.

60 *Id.* at 18.

61 *Id.* at 20–19.

62 Suncor Br., at 23.

63 *Id.* at 23–26.

64 *Id.* at 28–29.

allege that Suncor acted inconsistently with Magellan's justified expectations under the contract.[65] Under Suncor's interpretation of the law and theory of what happened, Magellan argues that the Terminalling Agreement gave Suncor total discretion to repudiate the agreement before the first Contract Year.[66] On the Ethanol Agreement, Magellan submits that the two claims are not entirely duplicative.[67] Still, even if they are, it has adequately stated a claim, "however framed," that Suncor prevented Magellan from receiving what it justifiably expected under the contract.[68]

IV. APPLICABLE STANDARDS OF REVIEW

A. PERSONAL JURISDICTION

"'A non-resident defendant may move to dismiss for lack of personal jurisdiction under this Court's Civil Rule 12(b)(2).'"[69] When a defendant does so the plaintiff bears the burden of establishing a proper basis for the Court's exercise of jurisdiction over the nonresident defendant.[70] At this stage, the plaintiff need only

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65 Opp'n Suncor Br., at 19–22.

66 *Id.* at 23.

67 *Id*. at 28.

68 *Id.* at 28.

69 *Li v. Xu-Nuo Pharma, Inc.*, 2022 WL 17588101, at *2 (Del. Super. Ct. Dec. 13, 2022) (quoting *Green Am. Recycling, LLC v. Clean Earth, Inc.*, 2021 WL 2211696, at *3 (Del. Super. Ct. June 1, 2021)).

70 *Outokumpu Eng'g Enters., Inc. v. Kvaerner EnviroPower, Inc.*, 685 A.2d 724, 727 (Del. Super. Ct. 1996).

make a *prima facie* showing that jurisdiction exists, and all factual disputes and reasonable inferences are resolved in the plaintiff's favor.[71]

B. FAILURE TO STATE A CLAIM

Under Rule 12(b)(6), a party can move to dismiss for failure to state a claim upon which relief can be granted.[72] In resolving a Rule 12(b)(6) motion, the Court "(1) accept[s] all well-pleaded factual allegations as true; (2) accept[s] even vague allegations as 'well pleaded' if they give the opposing party notice of the claim, (3) draw[s] all reasonable inferences in favor of the non-moving party, and (4) [will not dismiss a claim] unless the plaintiff would not be entitled to recover under any reasonably conceivable set of circumstances."[73] But, the Court need not "accept conclusory allegations unsupported by specific facts or . . . draw unreasonable inferences in favor of the non-moving party."[74] And the Court is not required to accept "every strained interpretation of the allegations proposed by the plaintiff."[75]

V. DISCUSSION

The Court first addresses the Suncor Canada Motion and determines that the Court has personal jurisdiction over Suncor Canada. Without doubt, this action

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[71] *Id.*

[72] Del. Super. Ct. Civ. R. 12(b)(6).

[73] *Cent. Mortg. Co. v. Morgan Stanley Mortg. Cap. Hldgs. LLC*, 27 A.3d 531, 535 (Del. 2011).

[74] *Price v. E.I. DuPont de Nemours & Co.*, 26 A.3d 162, 166 (Del. 2011), *overruled on other grounds by Ramsey v. Ga. S. Univ. Advanced Dev. Ctr.*, 189 A.3d 1255, 1277 (Del. 2018).

[75] *Malpiede v. Townson*, 780 A.2d 1075, 1083 (Del. 2001).

relates to Suncor Canada's contacts with Delaware in the form of the Parent Guaranty with Magellan, a Delaware plaintiff.

Turning to the Suncor Motion, the Court concludes that Suncor has adequately pled causes of action for breach of contract because Magellan has pled the elements, and Suncor is on notice of these claims. On the other hand, Magellan's claims for breach of the implied covenant of good faith and fair dealing under the governing laws of the Agreements meet with mixed results.

A. THE COURT HAS PERSONAL JURISDICTION OVER SUNCOR CANADA.

"'[T]o assess whether personal jurisdiction exists over non-resident defendants, Delaware courts apply a two-step analysis, asking first whether there is a statutory basis for jurisdiction and then inquiring into whether the exercise of personal jurisdiction over the defendants would be consistent with due process.'"[76] "In applying the constitutional requirement for personal jurisdiction, our Supreme Court has adopted the *International Shoe* test, and its progeny, for minimum contacts."[77]

Suncor Canada doesn't meaningfully contest, at least for the purposes of its motion, the statutory basis for personal jurisdiction alleged in the Complaint.[78]

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[76] *Li*, 2022 WL 17588101, at *3 (quoting *BAM Int'l, LLC v. MSBA Gp., Inc.*, 2021 WL 5905878, at *5 (Del. Ch. Dec. 14, 2021)).

[77] *Id*. (citing *Hazout v. Tsang Mun Ting*, 134 A.3d 274, 278 (Del. 2016)).

[78] *See* Canada Br., at 5–6.

Instead, it focuses on the due-process prong of the personal-jurisdiction inquiry.[79] And the parties agree that the issue here really comes down to the minimum contacts analysis.[80]

The focus of the due-process inquiry is whether the defendant engaged in sufficient "minimum contacts" with Delaware to require it to defend itself in the courts of this State consistent with the traditional notions of fair play and justice.[81] To establish jurisdiction over a nonresident defendant, the nonresident defendant's contacts with the forum must rise to such a level that it should "reasonably anticipate" being required to defend itself in Delaware's courts.[82] In other words, the defendant must take some act to purposefully avail itself of the privilege of conducting activities within the forum State, and the plaintiff's claims must derive from or be connected to those activities.[83] *Bristol-Meyers Squibb Co. v. Superior Court of California, San Francisco County*[84] reiterates that, for a forum state to exercise specific jurisdiction, the relevant lawsuit must arise out of or relate to a

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79 *See id.* at 8–13.

80 MTD Hr'g Tr. 29.

81 *AeroGlobal Capital Mgmt., LLC v. Cirrus Indus., Inc.*, 871 A.2d 428, 440 (Del. 2005) (quoting *International Shoe Co. v. Washington,* 326 U.S. 310 (1945)).

82 *Id*. (quoting *World–Wide Volkswagen Corp. v. Woodson,* 444 U.S. 286, 297 (1980)).

83 *Fuld v. Palestine Liberation Org.*, 606 U.S. 1, 13 (2025).

84 582 U.S. 255, 262 (2017).

defendant's contacts with the forum state.[85] Additionally, in determining whether specific jurisdiction exists, a court weighs the forum state's interests against the burden on the defendant.[86]

Magellan argues that Suncor Canada availed itself of Delaware laws when it created Suncor.[87] Magellan also contends that, through the Parent Guaranty, Suncor Canada induced Magellan, a Delaware entity, to engage in business with Suncor, another Delaware entity, which constitutes minimum contacts.[88] True, the creation of a Delaware entity can, in the right instance, constitute sufficient minimum contacts with Delaware.[89] But the formation of that entity must have a sufficient nexus to the cause of action brought here.[90]

There is a line of Delaware caselaw on parent company guarantees and their relation to a minimum contacts analysis. The Court starts with *Outokumpu Engineering Enterprises, Inc. v. Kvaerner EnviroPower, Inc*.[91] There, this Court held that guaranteeing a contract of a Delaware corporation alone isn't enough to

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85 *Varsity Brands Holding Co. LLC v. Arch Ins. Co.*, 2025 WL 552500, at *7 (Del. Super. Ct. Feb. 19, 2025).

86 *Id*. (citing *Bristol-Meyers Squibb Co.*, 582 U.S. at 263).

87 Opp'n Canada Br., at 7.

88 *Id*. at 8.

89 *Terramar Retail Ctrs., LLC v. Marion #2-Seaport Tr. U/A/D June 21, 2002*, 2017 WL 3575712, at *5 (Del. Ch. Aug. 18, 2017).

90 *In re P3 Health Grp. Holdings, LLC*, 2022 WL 8011513, at *5 (Del. Ch. Oct. 14, 2022).

91 685 A.2d 724 (Del. Super. Ct. 1996).

meet the minimum contacts analysis.[92] Then, in *Republic Envtl. Sys., Inc v. RESI Acquisition (Delaware) Corp.*,[93] this Court held that a foreign entity was subject to the Court's jurisdiction under Delaware's long-arm statute, and that exercising this jurisdiction did not offend Due Process.[94] The *Republic* Court distinguished the earlier *Outokumpu*[95] decision noting that *Outokumpu* dealt with: (1) a sister entity, not a parent entity, guaranteeing performance; (2) an underlying agreement governed by Norwegian, not Delaware law; (3) a personal guarantee governed by Swedish, not Pennsylvania law; and (4) construction of a power plant in Canada, not a dispute over failure of a Delaware corporation to pay its debt.[96] And the Court found that exercise of personal jurisdiction there didn't offend traditional notions of fair play and substantial justice since, by guaranteeing the financial obligations of a Delaware entity the defendant wholly owned, the defendant's Delaware connection wasn't random, fortuitous, or attenuated.[97] So the Court ruled that a defendant's guarantee of the obligations of a Delaware corporation wholly owned by the

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92 *Outokumpu Eng'g Enters., Inc. v. Kvaerner EnviroPower, Inc.*, 685 A.2d 724, 731 (Del. Super. Ct. 1996).

93 1999 WL 464521 (Del. Super. Ct. May 28, 1999).

94 *Id.* at *5.

95 685 A.2d 724 (Del. Super. Ct. 1996).

96 *Republic Envtl. Sys., Inc. v. RESI Acquisition (Delaware) Corp.*, 1999 WL 464521, at *3 (Del. Super. Ct. May 28, 1999).

97 *Id*. at *4.

defendant created specific jurisdiction for actions arising under the guaranty.[98] In *Republic*, the Court also seemed to place importance on the fact that the plaintiff too was a Delaware corporation.[99]

In *Summit Investors II, L.P. v. Sechrist Industries, Inc.*,[100] the Court of Chancery held that there were no minimum contacts when California-based defendants owned parts of a Delaware corporation and were co-obligors of the corporation.[101] The Court of Chancery distinguished the facts there from those of *Republic* and emphasized that the Delaware corporation was formed years before the agreements at issue and that those agreements didn't involve formation.[102] Further, the Court of Chancery opined that there was less of a burden on the defendants in *Republic*—who resided in Pennsylvania—from the California defendants in *Summit*.[103]

Finally, the District of Delaware cited this pervious caselaw when engaging a minimum contacts analysis in *1st Source Bank v. Merritt*.[104] There, the District

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98 *Id*. at *3.

99 *See id*. at *4 ("Philip Services had such fair warning that it may be haled into a Delaware Court because it . . . induced, by virtue of the express language in the Guaranty, the Delaware corporate Plaintiff to engage in the transactions at issue.").

100 2002 WL 31260989 (Del. Ch. Sept. 20, 2002).

101 *Summit Inv'rs II, L.P. v. Sechrist Indus., Inc.*, 2002 WL 31260989, at *5 (Del. Ch. Sept. 20, 2002).

102 *Id*. at *4.

103 *Id*. at *5.

104 759 F. Supp. 2d 505 (D. Del 2011).

Court analogized its case with *Republic* and *Summit Investors*.[105] The federal court concluded that the circumstance it faced was far more like *Republic* since: (1) the defendants wholly owned the Delaware corporation; and (2) the defendants guaranteed the Delaware corporation's financial obligations less than a month after formation.[106] The Court emphasized the fact that the sole-owner defendants signed the guarantees as part of the subsidiary's formation.[107]

To begin here, the Court observes that the caselaw just discussed all predates the seminal United States Supreme Court decision in *Bristol-Meyers Squibb Co*.[108] There, the Court held that California lacked specific personal jurisdiction because the injuries in that dispute didn't meaningfully tie to the defendant's connections within the state.[109] Under this modern personal jurisdiction due process analysis, courts are first to explore if an out-of-state defendant has established minimum contacts with Delaware, then determine whether the action arises out of or is sufficiently related to those minimum contacts.[110]

Here, Suncor Canada wholly owns Suncor and personally guaranteed to pay

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[105] *Id*. at 509.

[106] *Id*.

[107] *See id*.

[108] 582 U.S. 255 (2017).

[109] *Id*. at 260.

[110] *Varsity Brands Holdings Co. LLC*, 2025 WL 552500, at *9.

Suncor's obligations in connection with the Agreements.[111] This is like the defendants in *Republic*.[112] Magellan is a Delaware limited partnership, like the plaintiff in *Republic*.[113] Though the Agreements and Personal Guaranty do not involve Delaware law, and the work Magellan performs under the Agreements does not take place in Delaware.[114] And Suncor Canada didn't cover Suncor under the Parent Guaranty until almost twenty years after Suncor's Delaware incorporation.[115] But the statutory jurisdictional hook in this case comes from the 2022 Amendment to the Parent Guaranty when Suncor Canada agreed with Magellan to cover its wholly-owned Delaware subsidiary "in order to induce [Magellan] to enter into [the Agreements] with [Suncor]"[116] and the simultaneous amendment of that Guaranty to sweep the Agreements into the defined guaranteed Transactions with a concomitant more-than-doubling of the guaranteed sum.[117]

True, mere ownership of a Delaware subsidiary and a guarantee of operational

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[111] Compl., ¶¶ 5, 29; Terminalling Agreement, ¶ IX; *id.* Ex. A; Parent Guaranty; *id.*, Sixth Amendment (executed the same day as the Agreements).

[112] *Republic Envtl. Sys., Inc.*, 1999 WL 464521, at *3.

[113] Compl., ¶ 2; *Republic Envtl. Sys., Inc.*, 1999 WL 464521, at *4.

[114] *Id.* ¶¶ 10, 21, 27, 35.

[115] Smith Decl., ¶ 5; Compl., ¶ 28.

[116] *See* Parent Guaranty § 2, and Third Amendment § 2; *see generally* DEL. CODE ANN. tit. 10, § 3104(c)(6) (2025) "[A] court may exercise personal jurisdiction over any nonresident . . . who . . . [c]ontracts to insure or act as surety for, or on, any person, property, risk, contract, obligation or agreement located, executed or to be performed within the State.").

[117] Terminalling Agreement, ¶ IX; *id.* Ex. A; Parent Guaranty; *id.*, Sixth Amendment.

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responsibility for performance in another jurisdiction may not always be enough to establish minimum contacts in Delaware.[118] But in this case, Suncor Canada agreed with Magellan to cover the costs of its wholly-owned Delaware subsidiary to induce Magellan to enter into these specific Agreements. Suncor Canada availed itself to Delaware by directly contracting with Magellan to cover Suncor on them. *This* action is sufficiently related to *that* contact. Indeed, Magellan's only cause of action against Suncor Canada is for breach of the Parent Guaranty.[119] Delaware has a strong interest in adjudicating such contract disputes involving its citizens; again, Magellan is a Delaware plaintiff contracted with another Delaware entity.[120] Accordingly, the Court **DENIES** Suncor Canada's Motion to Dismiss.

B. MAGELLAN HAS STATED CLAIMS FOR BREACH OF CONTRACT.

1. The Court doesn't engage in piecemeal dismissal of otherwise well-pled causes of action.

Suncor is not attempting to knock out the entire breach of the Terminalling Agreement claim.[121] It is trying to get the Court to say that, if Suncor breached, it is only liable for actual damages, not liquidated damages.[122] At bottom, Suncor's

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[118] *See Outokumpu Eng'g Enters., Inc.*, 685 A.2d at 731–32 (finding no minimum contacts from mere ownership of a Delaware subsidiary and guaranteeing operational responsibility for performance in another jurisdiction).

[119] Compl., ¶¶ 100–112.

[120] *Outokumpu Eng'g Enters., Inc.*, 685 A.2d at 732.

[121] Suncor Br., at 11.

[122] *Id*. at 10–11.

argument concerns the measure of damages stemming from the alleged breach. It may indeed be difficult for Magellan to prove these damages. But Delaware law controls procedure here,[123] and the issue of damages is typically left for trial.[124] This issue that Suncor attempts to have decided now is inappropriate for a pleading-stage excision.[125] Any unexcused failure to perform a contract is a legal wrong.[126] At this point, Magellan has stated a claim for breach of contract including adequate identification of and prayers for potential damages.

To the extent Suncor claims that surgical dismissal now makes more sense than waiting until later in the litigation,[127] the Court disagrees. "'[W]hat is important at the pleadings stage is that [the plaintiff] has given [the defendant] sufficient notice

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[123] The law of the forum governs procedural matters. *Tumlinson v. Advanced Micro Devices, Inc.*, 106 A.3d 983, 987 (Del. 2013). As such, Delaware law governs presumptively governs "pre-trial practice" and "motions." *US Dominion, Inc. v. Fox News Network, LLC*, 2021 WL 5984265, at *18 (Del. Super. Ct. Dec. 16, 2021) (quoting RESTATEMENT (SECOND) OF CONFLICT OF LAWS § 127 cmt. a (A.L.I. 1971)).

[124] *Cercacor Labs., Inc. v. Metronom Health, Inc.*, 2025 WL 1180186, at *14 (Del. Super. Ct. Apr. 23, 2025).

[125] *Shearin v. E.F. Hutton Grp., Inc.*, 652 A.2d 578, 589 n.10 (Del. Ch. 1994) ("Questions of an appropriate measure of damage for breach of an at will employment contract are not appropriate on a motion to dismiss . . ."); *Traylor Eng'g & Mfg. Co. v. Nat'l Container Corp.*, 70 A.2d 9, 14 (Del. Super. Ct. 1949) (noting that motion to dismiss isn't the proper method for determining what damages are recoverable); *see also Cent. Mort.*, 27 A.3d at 536 ("Indeed, it may, as a factual matter, ultimately prove impossible for the plaintiff to prove his claims at a later stage of a proceeding, but that is not the test to survive a motion to dismiss.").

[126] *Medlink Health Sols., LLC v. JL Kaya, Inc.*, 2024 WL 1192781, at *6 (Del. Super. Ct. Mar. 20, 2024).

[127] MTD Hr'g Tr. 18.

as to the damages it is claiming.'"[128] It makes little sense for the Court to go beyond the well-established pleading-stage standard—on a pleading stage record—to decide as a matter of law and slice away those damages Magellan is disentitled.

2. The Ethanol Amendment is part of the Ethanol Agreement

On the Ethanol Agreement, Suncor argues that it does not have any obligations that it must perform and thus can't breach the Ethanol Amendment.[129] This argument is unpersuasive. Under Oklahoma law, "[a]n alteration of a contract cannot constitute a breach of contract because it becomes a part of the contract. The contract as altered is the agreement between the parties."[130] Since the Ethanol Amendment is part of the Ethanol Agreement, a breach of one is a breach of the same contract. Through the Ethanol Amendment, Magellan is increasing its storage capacity for Suncor's products, and Suncor's payment obligations will rise accordingly.[131] This all arises under the same contract.

Too, the Complaint contends that Suncor anticipatorily repudiated the Ethanol Amendment.[132] And an anticipatory repudiation gives the aggrieved party the ability

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[128] *Byborg Enterprises S.A. v. Vertex, Inc.*, 2025 WL 1911338, at *3 (Del. Super. Ct. July 11, 2025) (quoting *Pharm. Prod. Dev., Inc. v. TVM Life Sci. Ventures VI, L.P.*, 2011 WL 549163, at *7 (Del. Ch. Feb. 16, 2011)).

[129] Suncor Br., at 20.

[130] *Watt Plumbing, Air Conditioning & Elec. Inc. v. Tulsa Rig, Reel & Mfg. Co.*, 533 P.2d 980, 983 (Okla. 1975) (collecting cases).

[131] Ethanol Agreement § 2.

[132] Compl., ¶ 72.

to resort to any remedy for breach of contract.[133] Accordingly, the Court **DENIES** the Suncor Motion with respect to Counts I and II.

C. MAGELLAN STATES A CLAIM FOR BREACH OF THE IMPLIED DUTY AS TO ONE OF THE AGREEMENTS, BUT NOT THE OTHER.

1. The Implied Covenant Claim regarding the Terminalling Agreement survives dismissal.

Colorado law governs the Terminalling Agreement.[134] Under Colorado law, every contract contains an implied duty of good faith and fair dealing.[135] That said, the covenant may only be relied upon when the manner of performance under a specific contract term allows for discretion on the part of either party.[136] Magellan alleges in its complaint that "the parties had an obligation to work to reach the Commencement Date of the Terminalling Agreement, and Suncor impliedly promised not to prevent Magellan from completing the work necessary to reach the Commencement Date."[137] In Suncor's view this is simply too inspecific, *i.e.* Magellan has not alleged a specific provision of the Terminalling Agreement that

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[133] "So, where a party to a bilateral contract repudiates the contractual obligation to perform a required act in the future, the other party to the contract may treat the contract as then breached and immediately pursue a remedy for breach of the contract." *Bourke v. W. Bus. Products, Inc.*, 120 P.3d 876, 883 (Okla. Civ. App. 2005).

[134] Compl., ¶ 21 (citing Terminal Agreement Schedule B, § 19).

[135] *University of Denver v. Doe*, 547 P.3d 1129, 1140 (Colo. 2024).

[136] *Id.*; *See also id.* at 1150 (analyzing the specific provision alleged to support an implied duty claim); *Amoco Oil Co. v. Ervin*, 908 P.2d 493, 498 (Colo. 1995), *as modified on denial of reh'g* (Jan. 16, 1996).

[137] Compl., ¶ 78.

provided either party with discretion.

Given this contention, two principles guiding any Rule 12(b)(6) analysis are of particular moment here.

First, it is true that the Court need not adopt "every strained interpretation of the allegations" a plaintiff proposes.[138] But Delaware's pleading standard is "minimal."[139] Dismissal is inappropriate unless "under no reasonable interpretation of the facts alleged could the complaint state a claim for which relief might be granted."[140] Having examined the complaint as a whole and the attendant documents, the Court finds Magellan has adequately pled that it may recover under a reasonably conceivable set of circumstances susceptible of proof as to its implied duty claim.[141]

Second, while Suncor suggests its is a straightforward and simple pleading-deficiency challenge, it is truly asking the Court to engage in more substantive

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[138] *Malpiede*, 780 A.2d at 1083.

[139] *Cent. Mortg.*, 27 A.3d at 536 (citing *Savor, Inc. v. FMR Corp.*, 812 A.2d 894, 895 (Del. 2002)).

[140] *Unbound Partners Ltd. P'ship v. Invoy Holdings Inc.*, 251 A.3d 1016, 1023 (Del. Super. Ct. 2021) (internal quotation marks omitted); *see Cent. Mortg.*, 27 A.3d at 537 n.13 ("Our governing 'conceivability' standard is more akin to 'possibility . . . .'").

[141] *See Vinton v. Grayson*, 189 A.3d 695, 700 (Del. Super. Ct. 2018) ("If any reasonable conception can be formulated to allow Plaintiffs' recovery, the [Rule 12(b)(6)] motion must be denied."); *Hedenberg v. Raber*, 2004 WL 2191164, at *1 (Del. Super. Ct. Aug. 20, 2004) ("Dismissal is warranted [only] where the plaintiff has failed to plead facts supporting an element of the claim, or that under no reasonable interpretation of the facts alleged could the complaint state a claim for which relief might be granted.").

contract interpretation at this point.

Now, contract interpretation is a question of law and can in the proper instance be resolved on a motion to dismiss.[142] "But, to achieve dismissal, the motion must be supported by unambiguous contract terms."[143] And the Court cannot choose between two differing reasonable interpretations of contested language at the pleadings stage of a contract dispute.[144] To succeed under 12(b)(6), the movant's interpretation must be "the *only* reasonable construction as a matter of law."[145] Otherwise, for purposes of deciding a 12(b)(6) dismissal motion, the language must be resolved in the non-movant's favor.[146] Just so here.

Thus, the Court finds that Count III meets the minimal standard of stating a claim that withstands dismissal under Rule 12(b)(6).

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[142] *E.g.*, *Allied Cap. Corp. v. GC-Sun Hldgs., L.P.*, 910 A.2d 1020, 1030 (Del. Ch. 2006) ("Under Delaware law, the proper interpretation of language in a contract is a question of law. Accordingly, a motion to dismiss is a proper framework for determining the meaning of contract language.").

[143] *Blue Cube Spinco, LLC v. Dow Chemical Co., 2021 WL 4453460, at *7 (citing VLIW Tech., LLC v. Hewlett-Packard Co.*, 840 A.2d 606, 615 (Del. 2003); *see also GMG Cap. Invs., LLC v. Athenian Venture Partners I, L.P.*, 36 A.3d 776, 783 (Del. 2012).

[144] *Vanderbilt Income & Growth Assocs., L.L.C. v. Arvida/JMB Managers, Inc.*, 691 A.2d 609, 613 (Del. 1996); *see also Appriva S'holder Litig. Co., LLC v. EV3, Inc.*, 937 A.2d 1275, 1292 (Del. 2007) ("Even if [the] Court consider[s] the [movant's] interpretation more reasonable than the [non-movant's], on a Rule 12(b)(6) motion it [is] error to select the 'more reasonable' interpretation as legally controlling.").

[145] *VLIW Tech.*, 840 A.2d at 615 (citation omitted).

[146] *Id.*; *see Veloric v. J.G. Wentworth, Inc.*, 2014 WL 4639217, at *8 (Del. Ch. Sept. 18, 2014) (observing that at the motion to dismiss stage, contested contract provisions must be interpreted most favorably to the non-moving party).

2. Brought under Oklahoma law, regarding a commercial agreement, the Implied Covenant Claim needs gross or wanton negligence.

Conversely, Oklahoma law governs the Ethanol Agreement.[147] Under Oklahoma law also, every contract contains an implied duty of good faith and fair dealing.[148] "In ordinary commercial contracts, a breach of that duty merely results in damages for breach of contract, not independent tort liability."[149] Without gross or wanton negligence by a party to a commercial contract, a breach of the implied covenant results in a breach of contract.[150] Magellan's complaint only avers that "Suncor's repudiation of the Amendment to the Ethanol Agreement was a breach of its duty of good faith and fair dealing."[151] This is devoid of any allegation of gross or wanton negligence. As such, under Oklahoma law, Magellan's claim for breach of the duty of good faith and fair dealing is dealt with through its breach of contract claim, not as a separate cause of action.[152] Hence, Count IV doesn't state a claim.

Accordingly, the Court DENIES Suncor's Motion as to Count III and **GRANTS** it with respect to Count IV.

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[147] Compl., ¶ 27 (citing Ethanol Agreement, General Terms and Conditions for Ethanol Storage Services Agreement, § 20).

[148] *Panama Processes, S.A. v. Cities Serv. Co.*, 796 P.2d 276, 290 (Okla. 1990).

[149] *Wathor v. Mutual Assur. Adm'rs, Inc.*, 87 P.3d 559, 561 (Okla. 2004).

[150] *First Nat. Bank & Tr. Co. of Vinita v. Kissee*, 859 P.2d 502, 509 (Okla. 1993) (citing *Rodgers v. Tecumseh Bank*, 756 P.2d 1223, 1227 (Okla. 1988)).

[151] Compl., ¶ 98.

[152] *Davis v. Am. Taekwondo Ass'n, Inc.*, 2014 WL 1414885, at *3 (W.D. Okla. Apr. 11, 2014) (surveying Oklahoma law on the subject and dismissing a duplicative breach of duty claim).

VI. CONCLUSION

For these reasons, the Court **DENIES** the Suncor Canada Motion and **GRANTS in part and DENIES in part** the Suncor Motion.

IT IS SO ORDERED.

/s/ *Paul R. Wallace*

Paul R. Wallace, Judge

Original to Prothonotary

cc: All counsel via File & Serve