IN THE SUPERIOR COURT OF THE STATE OF DELAWARE

OMEGAWAVE OY, Plaintiff, v. OTO.COACH, INC., Defendant.	)	
OTO.COACH, INC., Third-Party Plaintiff, v. OW INTERNATIONAL, LLC, OW TECHNOLOGIES, LLC, and VN CONSULTING SERVICES, Third-Party Defendants.	)	C.A. No. N23C-11-054 KMV

Submitted: October 20, 2025
Decided: June 3, 2026
Written Decision Withdrawn, Clarified, and Reissued: June 12, 2026

Upon Third-Party Defendants'
OW International, LLC and OW Technologies, LLC's
Motion to Dismiss OTO.Coach's Third-Party Complaint
GRANTED

Upon VN Consulting Services'
Motion and Opening Brief in Support of Third-Party
Defendant's Motion to Dismiss Amended Third Party Complaint
GRANTED

Upon OTO.Coach's
Motion to Amend Third-Party Complaint
DENIED

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VAVALA, J.

I. INTRODUCTION

In this memorandum opinion, the Court considers whether a third-party action filed in Delaware against two nonresident defendants must be dismissed for lack of personal jurisdiction and proper venue in Delaware, and whether the third-party plaintiff should be permitted to amend its complaint for the second time.

Construing the record in the light most favorable to the nonmovant third-party plaintiff, the Court concludes the third-party complaint against both third-party, nonresident defendants must be dismissed for lack of personal jurisdiction under Rule 12(b)(2)[1] because the forum selection clause at issue does not establish jurisdiction over them as non-signatories, and no other basis for personal jurisdiction has been established. As the Court lacks personal jurisdiction, it does not rule on the merits of the third-party defendants' Rule 12(b)(3)[2] motions to dismiss on grounds of improper venue under the doctrine of *forum non conveniens* or the sufficiency of third-party plaintiff's claim under Rule 12(b)(6).[3] Finally, the Court concludes the third-party plaintiff's motion for leave to amend the third-party complaint would be futile as to the jurisdictional issue.

[1] Del. Super. Ct. Civ. R. 12(b)(2).

[2] Del. Super. Ct. Civ. R. 12(b)(3).

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

Accordingly, the third-party defendants' motions to dismiss under Superior Court Civil Rule 12(b)(2) are **GRANTED** and the third-party plaintiff's motion to amend the third-party complaint is **DENIED**.

II. BACKGROUND[4]

A. The Parties

Omegawave Oy ("Omega") is incorporated in Finland and maintains its principal place of business in Finland.[5] OTO.Coach, Inc. ("OTO") is incorporated in Canada with its principal place of business in Canada.[6] OW International LLC and OW Technologies LLC (collectively, "OW") are Oregon corporations.[7] VN Consulting Services ("VN") is also incorporated in Oregon.[8]

[4] Unless otherwise noted, all Docket Items ["D.I."] refer to Case No. N23C-11-054 KMV. The facts set forth herein are drawn from D.I. 26, Defendant OTO.Coach, Inc.'s Answer and Affirmative Defenses to Plaintiff's Complaint and Counterclaim and Third-Party Complaint against OW International, LLC, OW Technologies, LLC, and VN Consulting Services ["Answer" or "3d Party Compl."] and Exhibits ["Exs."] A, B, and C, attached thereto. Ex. A is Omegawave Oy's Complaint against OTO ["Compl."] (D.I. 1) and its Ex. A, the Asset Purchase Agreement ["APA"]. Ex. B is the August 24, 2022 Promissory Note between OTO and OW ["OW Note"]. Exhibit C is the August 24, 2022 Promissory Note between OTO and VN ["First VN Note"]. The averments in the 3d Party Compl., as well the content of the APA, the OW Note, and the First VN Note are assumed to be true for purposes of the instant motions.

[5] Compl. ¶ 1; Answer ¶ 1.

[6] Compl. ¶ 1; Answer ¶ 2.

[7] 3d Party Compl. ¶ 2.

[8] *Id.* ¶ 3.

B. The Parties' Agreements

1. *Omega's Debts to OW and VN*

OW owned technology known as the "Omegawave System."[9] In 2012, OW sold this system and other assets to Omega.[10] That sale created a debt of €1,338,253 payable to OW ("OW Debt").[11] Omega last made a payment on that debt in 2015.[12] Omega held the OW Debt, as a liability, through 2022, but OW did not attempt to force payment from Omega.[13]

Omega employed Valeriy Nasedkin.[14] While employed as Vice President of Business Development, Nasedkin agreed to defer a year's salary in return for an amount triple its value to be paid upon his future exit.[15] This amounted to $700,000[16] and created a debt payable by Omega to VN ("VN Debt").[17]

[9] *See* 3d Party Compl. ¶ 4; *see also* D.I. 40, OTO.Coach Inc.'s Combined Answering Brief in Opposition to Third-Party Defendants' Motion to Dismiss Third-Party Complaint ["OTO Opp."].

[10] 3d Party Compl. ¶ 5.

[11] *Id.* ¶ 6.

[12] *Id.*

[13] *Id.* ¶ 7.

[14] *Id.* ¶ 6-7.

[15] D.I. 37, VN Consulting Services' Motion and Opening Brief in Support of Third-Party Defendant's Motion to Dismiss Amended Third Party Complaint, ["VNO"].

[16] 3d Party Compl. ¶ 6-7.

[17] *Id.* ¶ 6.

2. *Omega Sells Assets and Liabilities to OTO: the APA*

In January 2022, Omega entered negotiations with OTO for the sale of substantially all its assets.[18] As part of those negotiations, OTO was to assume Omega's debt liabilities to OW and VN.[19] In March 2022, Omega and OTO's negotiations were reduced to a writing in a memorandum of understanding.[20]

By August 2022 negotiations were finalized, and Omega and OTO executed the Asset Purchase Agreement (the "APA") on August 24, 2022.[21] The parties to the APA are Omega and OTO.[22] The APA lays out the specific obligations of Omega and OTO vis-à-vis the purchase.[23]

The APA required Omega to transfer certain assets to OTO.[24] Section 2.03 obligated OTO to assume certain enumerated liabilities of Omega, including the OW and VN Debts.[25] OTO was required to provide confirmation of the assumption of those debts as closing deliverables.[26] Section 2.05 of the APA also required OTO to

[18] *Id.* ¶ 11.

[19] *Id.* ¶¶ 11, 13.

[20] *Id.* ¶¶ 12-13; APA, Recitals.

[21] *Id.* ¶ 15; *see also* APA.

[22] APA at 1, 3.

[23] 3d Party Compl. ¶ 13-15; APA, Article II.

[24] APA, Article II.

[25] *Id.*, Article II, § 2.03(d) and (e).

[26] *Id.*, Article III, § 3.02(b) iv and vi.

pay Omega[27] a total of €11,778,253[28] pursuant to schedule that featured a combination of fixed and variable payments.[29]

Section 8.06 of the APA is a non-integration and anti-reliance clause.[30] Section 8.10(b) of the APA is a forum selection clause that binds Omega and OTO to Delaware's jurisdiction for all disputes arising from the APA:[31]

> Except as set out in Section 7.10, any action or proceeding arising out of or based upon this Agreement, the other Transaction Documents or the transactions contemplated hereby or thereby may be brought in the courts of the State of Delaware, and each party irrevocably submits and agrees to attorn to the exclusive jurisdiction of such courts in any such action or proceeding. The parties irrevocably and unconditionally waive any objection to the venue of any action or proceeding in such courts and irrevocably waive and agree not to plead in any such court that any such action or proceeding brought in any such court has been brought in an inconvenient forum.[32]

OW and VN are not parties to the APA,[33] but OTO assumed Omega's debts to OW and VN on the day of closing the APA.[34]

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[27] *Id.*

[28] *Id.*

[29] APA, § 2.05.

[30] APA, § 8.06.

[31] *See* Compl. ¶ 4, n. 1; APA, § 8.06.

[32] APA, § 8.06.

[33] *Id.* at 1, 3.

[34] 3d Party Compl. ¶ 14; Exs. A, B, and C.

a. The OW Note

OTO restructured the OW Debt it assumed under the APA in a promissory note with OW (the "OW Note").[35] The OW Note does not contain a forum selection clause, but contains a choice of law provision specifying the application of Canadian law.[36] The OW Note acknowledges the APA in its recitals, but does not incorporate the APA by reference.[37] The OW Note further provides that it "shall not be changed, modified, discharged or cancelled orally or in any manner other than by agreement in writing by the Holder (OW) or one of the Holder's heirs, executors, administrators, personal legal representatives or assigns."[38]

b. The First VN Note

OTO restructured the VN Debt it assumed under the APA in a promissory note (the "First VN Note" and, together with the OW Note, the "Notes").[39] The First VN Note did not contain a forum selection clause, but contained a choice of law provision specifying Canadian law.[40] The VN Note does not mention the APA at

[35] *Id.*, Ex. B at 2.

[36] *Id.* (providing it "shall be interpreted and construed in accordance with the laws of the Providence if Ontario and the federal law of Canada applicable therein."). *See also* D.I. 29, OW International, LLC and OW Technologies, LLC Motion to Dismiss Third Party Complaint and Opening Brief in Support of Third-Party Defendant's Motion to Dismiss Amended Third Party Complaint ["OWO"].

[37] Ex. B.

[38] *Id.*

[39] 3d Party Compl. ¶ 14 and Ex. C.

[40] Ex. C at 2.

all.[41] The VN Note also provides that it "shall not be changed, modified, discharged or cancelled orally or in any manner other than by agreement in writing by the Holder or one of the Holder's heirs, executors, administrators, personal legal representatives or assigns."[42]

c. The Second VN Note

After OTO missed the first two payments under the VN Note, on May 2, 2023, OTO and VN entered a second promissory note (the "Second VN Note").[43] The Second VN Note did not condition its performance on the APA—or even mention it—and contained substantially the same provisions other than a different payment schedule.[44] After executing the Second VN Note, OTO made the first payment of $150,000 to VN but failed to make any additional payments.[45]

C. The Lawsuits

1. *The Canadian Action: OW v. OTO*

In 2023, OW sued OTO in Ontario, Canada based upon OTO's failure to satisfy its obligations under the OW Note ("Canadian Action").[46] On December 4, 2024, the Superior Court of Justice in Ontario, Canada denied OTO's *forum non*

[41] Ex. C.

[42] *See* VNO.

[43] *See* Third-Party Plaintiff's Mot. to Amend Third-Party Compl., Ex. B ¶ 15.

[44] *Id.*

[45] *Id.*

[46] *See* OWO; OTO Opp.

conveniens motion to dismiss the Canadian Action.[47] OTO appealed and the Court of Appeals for Ontario upheld the lower court's decision.[48] The case continues to be litigated on the merits in Canada.[49]

2. *The Delaware Action: Omega v. OTO*

Omega alleges OTO paid Omega the required amount at closing but failed to make the next four payments.[50] On November 8, 2023, Omega sued OTO in the Superior Court of Delaware for breach of contract based upon OTO's failure to make multiple payments required by the APA ("Omega Complaint").[51]

3. *The Delaware Third-Party Complaint: OTO v. OW and VN*

Fifteen months later, on February 7, 2025, OTO answered and counter claimed against Omega, and asserted a third-party complaint against OW and VN ("Third-Party Complaint").[52] OTO's Third-Party Complaint alleges, after the APA was executed, OTO became aware that Allen Huffstutter, a manager of certain OW entities, and Valeriy Nasedkin, of VN, devised a plan to sell Omega with the goal to defraud OTO into assuming the OW and VN Debts.[53] OTO claims Huffstutter made

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[47] *See* OWO.

[48] D.I. 59, Decision by the Court of Appeals for Ontario.

[49] *Id*.

[50] Compl. Preliminary Statement.

[51] 3d Party Compl. ¶ 1.

[52] *See generally* 3d Party Compl.

[53] 3d Party Compl. ¶¶ 8-10, 30.

material misrepresentations that affected the value of Omega's assets OTO purchased under the APA.[54] Specifically, OTO alleges Huffstutter made misrepresentations regarding the commercialization of technology and other assets;[55] the revenue streams OTO expected to receive from customers (who then failed to renew contracts);[56] the timely transfer of ownership of IP assets;[57] and the security of information associated with Omega's technology operations.[58] OTO claims it "believed" the APA and the OW and VN Notes "were connected contracts," and OTO's payment of those Notes would be derived from profits it received from the assets purchased from Omega.[59] OTO reasons that because the consideration it received under the APA (Omega's assets' value) was tied to OTO's assumption of the OW and VN Debts (Omega's liabilities), the OW and VN Notes and their legitimacy as contracts arose from and depended on the APA.[60] Finally, OTO argues that since its debt obligations to OW and VN were tied to the consideration it received under the APA, and Omega allegedly breached the APA, the OW and VN

[54] *Id.* ¶26.

[55] *Id.* ¶17-18.

[56] *Id.*

[57] *Id.* ¶21.

[58] *Id.* ¶¶ 23-25.

[59] 3d Party Compl. ¶13.

[60] *Id.* ¶14.

Notes are void and unenforceable.[61] Thus, OTO's Third-Party Complaint seeks declaratory judgment finding the OW Note and First VN Note are void and unenforceable.[62]

On May 2, 2025, OTO amended its Third-Party Complaint against OW and VN to reflect service had been effectuated via 10 *Del. C.* § 3104, Delaware's Long Arm Statute.[63] OTO did not make any other substantive changes to the allegations set forth in the Third Party-Complaint.[64]

4. *The Oregon Action: VN v. OTO*

In June 2025, VN filed suit against OTO in Oregon[65] for breaching the Second VN Note.[66] VN's action against OTO in Oregon was brought subsequent OTO's Third-Party Complaint against OW and VN in Delaware, but before OTO's second motion to amend the Third-Party Complaint.[67]

[61] *Id*. ¶¶ 37-40.

[62] *Id.*

[63] D.I. 28, Amendment to OTO.Coach Inc's 3d Party Complaint.

[64] *Id.*

[65] *See* VNO.

[66] *Id.*

[67] *See* OTO Opp.

D. The Parties' Arguments Regarding Jurisdiction

1. *OW's Motion to Dismiss the Third-Party Complaint*

On May 19, 2025, OW moved this Court to dismiss OTO's Third-Party Complaint under Superior Court Civil Rule 12(b)(2) and (3).[68] OW makes six arguments in favor of dismissal of the Delaware action: (a) jurisdiction is improper under Delaware's Long-Arm statute;[69] (b) the Conspiracy Theory of Jurisdiction does not apply;[70] (c) OW is not bound by the APA's forum selection clause;[71] (d) Delaware's exercise of jurisdiction would offend constitutional due process; (e) the *McWane* doctrine counsels dismissal in favor of the first-filed Canadian action;[72] and (f) the doctrine of *forum non conveniens* weighs in favor of dismissal of the Delaware action.[73]

2. *VN's Motion to Dismiss the Third-Party Complaint*

On July 7, 2025, VN moved to dismiss OTO's Third-Party Complaint under Rule 12(b)(2), (3) and (5).[74] VN advances four arguments in favor of dismissal of the Delaware action: (a) jurisdiction is improper under Delaware's Long-Arm

[68] *See generally* OWO.

[69] OWO at 17-19.

[70] *Id.* at 20-23.

[71] *Id.* at 24-27.

[72] *Id.* at 11-13.

[73] *Id.* 14-15.

[74] *See generally* VNO.

statute;[75] (b) Delaware's exercise of jurisdiction would offend constitutional due process;[76] (c) the doctrine of *forum non conveniens* weighs in favor of dismissal of the Delaware action in favor of the Oregon action;[77] and (d) OTO's declaratory judgment action against VN fails to state a claim upon which relief may be granted.[78]

3. *OTO's Opposition to OW's and VN's Motions to Dismiss*

OTO's Third-Party Complaint states Delaware has personal jurisdiction over OW and VN and venue in Delaware is appropriate on three bases: (1) the OW and VN Notes are Transaction Documents or a transaction contemplated by the APA; (2) OW and VN, by virtue of a conspiracy between their principal representatives to inflate the sale price of Omega, should be subject to jurisdiction under the Conspiracy Theory of Jurisdiction, that is, they should have foreseen the conspiracy would cause a lawsuit between Omega and OTO;[79] and (3) the Notes are contingent upon execution of the APA and, therefore, inextricably linked and subject to APA's forum selection clause.[80] OTO filed a combined answer to OW's and VN's motions

[75] VNO at 9-16.

[76] *Id.* at 17-18.

[77] *Id.* at 18-22.

[78] *Id.* at 22.

[79] 3d Party Compl. ¶¶ 29-34.

[80] *Id.* ¶¶ 35.

to dismiss the Third-Party Complaint on August 11, 2025, primarily arguing OW and VN are bound by the APA's forum selection clause.[81]

4. *OTO's Second Motion to Amend the Third-Party Complaint*

Contemporaneous with the filing of its combined answer, OTO moved to amend its Third-Party Complaint against VN ("Second Motion to Amend") to correct what counsel described as an "administrative error" by adding the Second VN Note.[82] OW takes no position on the Second Motion to Amend. VN opposes[83] arguing that OTO acted in bad faith by intentionally omitting the existence of the Second VN Note from its original and Amended Third-Party Complaint and praying this Court not to reward such motives.[84] VN further contends the amendment will cause VN to be prejudiced because it already filed suit in Oregon to enforce the Second VN Note before OTO moved for leave to amend the Third-Party Complaint. OTO's Counsel confirmed that VN filed in Oregon before OTO filed the Second Motion to Amend.

The motion was fully briefed. Oral argument was held before the Court on October 13, 2025.

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[81] *See* OTO Opp.

[82] D.I. 41, OTO.Coach Inc.'s Motion for Leave to Amend the Third-Party Complaint ["2nd Mot. Amend."].

[83] *See* D.I. 46, VN Consulting Services' Opposition to OTO.Coach Inc.'s Motion for Leave to Amend the Third-Party Complaint ["VN Opp."].

[84] *Id*.

III. DISCUSSION

The threshold issue pending before this Court is whether this Court has a basis to exercise personal jurisdiction over OW and VN. Without jurisdiction, the Court lacks the fundamental authority to consider the secondary issues of whether (1) Delaware and is a proper venue to litigate the Third-Party Complaint; (2) whether, even if there is proper jurisdiction and venue, the Court should, as a discretionary matter, dismiss the action in Delaware in favor of another more suitable forum under the doctrine of *forum non conveniens*; and (3) whether the Third-Party Complaint fails to state a claim upon which relief may be granted. The Court further considers whether OTO's Second Motion to Amend the Third-Party Complaint should be granted.

A. Personal Jurisdiction

OW and VN move to dismiss OTO's Third Party Complaint for lack of personal jurisdiction on numerous grounds as discussed above. In opposition, OTO appears to abandon certain theories upon which it initially relied for jurisdiction in the Third-Party Complaint, most notably Delaware's Long-Arm Statute (used to effect service upon both OW and VN) and the Conspiracy Theory of Jurisdiction, in favor of the argument the APA's forum selection clause binds OW and VN as non-signatories. For the sake of completeness, this decision addresses the full breadth of the parties' arguments regarding jurisdiction.

1. *Rule 12(b)(2)*

"A nonresident defendant may move to dismiss for lack of personal jurisdiction under Rule 12(b)(2)."[85] Dismissal is appropriate when a plaintiff cannot establish a basis for the Court's exercise personal jurisdiction over the nonresident defendant.[86] A plaintiff does not bear this evidentiary burden at the pleading stage—only subsequent to a nonresident defendant's motion to dismiss for lack of personal jurisdiction.[87] Post motion to dismiss, Plaintiff "need only make a *prima facie* showing of personal jurisdiction and 'the record is construed in the light most favorable to the plaintiff.'"[88] The Court may consider the pleadings, affidavits, discovery of record, and briefs in determining whether a plaintiff satisfies that burden[89] and draws all reasonable inferences in favor of the nonmovant.[90]

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[85] *BACO Holdings, Inc. v. Arria Data2Text, Ltd.*, 2023 WL 2199871, at *1 (Del. Super. Ct. Feb. 24, 2023) (citing *Green Am. Recycling, LLC v. Clean Earth, Inc.,* 2021 WL 2211696, at *3 (Del. Super. June 1, 2021) and relying on Del. Super. Ct. Civ. R. 12(b)(2)).

[86] Super. Ct. Civ. R. 12(b)(2); *AeroGlobal Cap. Mgmt., LLC v. Cirrus Indus.*, Inc., 871 A.2d 428, 437 (Del. 2005); *Econ. Steel Bldg. Techs., LLC v. E. W. Constr., Inc.,* 2020 WL 1866869, at *1 (Del. Super. Apr. 14, 2020) (citing *AeroGlobal*); *Mason v. Allstate Indem. Co.*, 2024 WL 4563935, at *2 (Del. Super. Oct. 23, 2024) and *Green Am. Recycling*, 2021 WL 2211696, at *3).

[87] *Mason*, 2024 WL 4563935, at *2 (citing *Green Am. Recycling*, 2021 WL 2211696, at *3); *AeroGlobal Cap. Mgmt.*, 871 A.2d at 437.

[88] *Focus Financial Partners, LLC v. Holsopple*, 241 A.3d 784, 800-801 (Del. Ch. 2020) (citing *Ryan v. Gifford*, 935 A.2d 258, 265 (Del. Ch. 2007) (quoting *Cornerstone Techs., LLC v. Conrad*, 2003 WL 1787959, at *3 (Del. Ch. Mar. 31, 2003))).

[89] *Mason*, 2024 WL 4563935, at *2 (quoting *Econ. Steel*, 2020 WL 1866869, at *1). *See also Green Am. Recycling*, 2021 WL 2211696, at *3 (the record as a whole is considered, including the complaint, affidavits, and parties' briefs).

[90] *Degregorio v. Mariott Intl., Inc.*, 2018 WL 3096627, at *5 (Del. Super. June 20, 2018).

Personal jurisdiction over a nonresident defendant may be established by statute[91] or the contractual consent of the parties.[92] When jurisdiction is asserted by statute, the Court applies a two-pronged analysis to determine whether personal jurisdiction exists, considering, first, whether Delaware's Long-Arm Statute is applicable and, second, whether subjecting the nonresident defendant to jurisdiction in Delaware violates the Due Process Clause of the Fourteenth Amendment of the U.S. Constitution (the "minimum contacts" requirement).[93]

The parties may also expressly or impliedly consent to personal jurisdiction by contract.[94] The Supreme Court of the United States has recognized "the personal

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[91] *Green Am. Recycling*, 2021 WL 2211696, at *3 (citing *Matthew v. Fl%20akt Woods Group SA*, 56 A.3d 1026, 1026 (Del. 2012)); *see also Sternberg v. O'Neill,* 550 A.2d 1105, 1109 n. 4 (Del. 1988).

[92] *Green Am. Recycling*, 2021 WL 2211696, at *3 (citing *Holsopple*, 241 A.3d at 801).

[93] *Matthew v. Fl%20akt Woods Grp. SA*, 56 A.3d at 1027 ("Under settled law, a nonresident defendant must have sufficient 'minimum contacts with [the forum state] such that the maintenance of the suit does not offend traditional notions of fair play and substantial justice.'"); *See also AeroGlobal*, 871 A.2d at 438; *LaNuova D & B, S.p.A v. Bowe Co., Inc.*, 513 A.2d 764, 769 (Del. 1986) (citing *Waters v. Deutz Corp.*, 479 A.2d 273 (Del. 1984)); *Mason,* 2024 WL 4563935, at *2 (citing *Biomeme, Inc. v. McAnallen*, 2021 WL 5411094, at *2 (Del. Super. Nov. 10, 2021)).

[94] *Sternberg,* 550 A.2d at 1109 n. 4 ("A party may submit to a given court's jurisdiction by contractual consent [and] [p]arties may stipulate to personal jurisdiction."); *BACO Holdings,* 2023 WL 2199871, at *5 ("It is well-settled that Delaware law permits a defendant to contractually agree to a court's exercise of personal jurisdiction."); *Green Am. Recycling*, 2021 WL 2211696, at *4 (citing on *Holsopple*, 241 A.3d at 801, for the proposition there are "a 'variety of legal arrangements' by which a litigant may give 'express or implied consent to the personal jurisdiction of the court' and that "[o]ne such arrangement is a forum-selection clause in a contract . . ." (citations omitted)).

jurisdiction requirement is a waivable right."[95] Consistent with that view, the Delaware Supreme Court has held "[w]here the parties to [a] forum selection clause have consented freely and knowingly to the court's exercise of jurisdiction, the clause is sufficient to confer personal jurisdiction on a court."[96] Likewise, freedom to contract allows parties to designate, by private agreement, a proper venue to hear disputes arising therefrom.[97] "When ruling on such . . . motion[s], this Court should 'give effect to the terms of private agreements to resolve disputes in a designated judicial forum out of respect for the parties' contractual designation.'"[98]

The circumstances under which a non-signatory to an agreement containing a forum selection clause may be bound are more limited. A non-signatory may be

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[95] *Ins. Corp. of Ireland v. Compagnie des Bauxites de Guinee,* 456 U.S. 694 (1982) (cited with approval in *Genuine Parts Co. v. Cepec,* 137 A.3d 123, 130 (Del. 2016)); *Mehra v. Teller,* 2023 WL 2260640, at *35-36 (Del. Ch. Feb 28, 2023); *accord Sternberg,* 550 A.2d at 1109 n. 4 ("A party may submit to a given court's jurisdiction by contractual consent . . . Parties may stipulate to personal jurisdiction."); *BACO Holdings,* 2023 WL 2199871 at *5 (citing *In re Pilgrim's Pride Corp. Derivative Litig.*, 2019 WL 1224556, at *1 (Del. Ch. Ct. Mar. 15, 2019)).

[96] *Nat'l Indus. Gp. (Hldg.) v. Carlyle Inv. Mgmt. LLC (Carlyle II),* 67 A.3d 373, 381 (Del. 2013) (citation omitted); *Sternberg,* 550 A.2d at 1109 n. 4.

[97] *BACO Holdings,* 2023 WL 2199871, at *5 ("It is well-settled that Delaware law permits a defendant to contractually agree to a court's exercise of personal jurisdiction"); *Green Am. Recycling*, 2021 WL 2211696, at *7 (explaining that a contract may grant jurisdiction exclusively, "regardless of a party's residence or contacts . . . ").

[98] *Nachbar v. Coronados Pool Plaster Inc.*, 2025 WL 1863255, at *1 (Del. Super. July 2, 2025) (citing *Loveman*, 2009 WL 847655, at *2); *Merinoff v. Empire Merchants, LLC,* 2017 WL 464525, at *3-7 (Del. Ch. Feb. 2, 2017) ("The courts of Delaware defer to forum selection clauses and routinely give effect to the terms of private agreements to resolve disputes in a designated judicial forum out of respect for the parties contractual designation.") (quotations and citations omitted); *Everphone*, 2023 WL 7996560.

bound by a contractual forum selection clause, but only upon satisfying the three-pronged *Capital Group* test.[99]

Applying these rubrics, the Court first analyzes whether OTO has established a proper statutory basis to exercise jurisdiction over OW or VN.

2. *Delaware's Long-Arm Statute*

There is no basis for this Court to exercise personal jurisdiction over OW or VN under Delaware's Long-Arm Statute. "The first step in the long-arm analysis is to identify, which, if any, scenarios under [Section] 3104 are present . . ."[100] Those scenarios include transacting any business or performing work; contracting to supply services or things; causing tortious injury by an act or omission in Delaware or, outside Delaware, if the entity regularly does or solicits business, engages in any other persistent course of conduct in the State or derives substantial revenue from services, or things used or consumed here; holding an interest in, using or possessing real property; or contracting to insure or act as surety for, or on, any person, property, risk, contract, obligation or agreement in certain circumstances.[101]

OW and VN argue Delaware's Long Arm statute is not applicable because none of the Section 3104 scenarios apply to them.[102] Despite effecting service

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[99] *Cap. Grp. Cos., Inc. v. Armour*, 2004 WL 2521295, at *5 (Del. Ch. Oct. 29, 2004).

[100] *CH Assocs. XI, LLC v. 1102 W. St., LP*, 2025 WL 671767, at *4 (Del. Super. Mar. 3, 2025).

[101] 10 *Del. C.* § 3104(c).

[102] OWO 17-19; VNO at 9-16.

pursuant to 10 *Del. C.* § 3104,[103] OTO does not argue in its briefing that it meets *any* of the scenarios under Section 3104. Accordingly, OTO has failed to establish *prima facie* personal jurisdiction over OW or VN under Delaware's Long-Arm Statute and the Court moves on to consider the issue of minimum contacts.

3. *Minimum Contacts under the Conspiracy Theory of Jurisdiction*

OTO's Third-Amended Complaint pleads this Court should exercise jurisdiction over OW and VN based upon the existence of a conspiracy.[104] Conversely, OW contends the conspiracy theory of jurisdiction does not apply because OTO failed to identify a substantial act occurring in Delaware,[105] OTO does not appear to directly address this point in its opposition brief,[106] but in any event, the Court agrees with OW.

In *Istituto Bancario Italiano, SpA v. Hunter Engineering Co.,*[107] *Inc.,* the Delaware Supreme Court adopted and analyzed the conspiracy theory of jurisdiction.[108] The theory is "based upon the legal principle that one conspirator's

[103] *See* D.I. 28, OTO's Amendment to the Complaint and Exs. A, B, C & D thereto (regarding the sending of process and the complaint to VN and OW pursuant to 10 *Del. C.* § 3104).

[104] Compl. ¶¶ 8-10, 13, 14, 17-18, 21, 23-26, and 30.

[105] OWO 20-23.

[106] *See generally* OTO Opp.

[107] 449 A.2d 210 (Del. 1982).

[108] *Id.*

acts are attributable to the other conspirators."[109] In other words, "if the purposeful act or acts of one conspirator are of a nature and quality that would subject the actor to the jurisdiction of the court, all of the conspirators are subject to the jurisdiction of the court."[110] *Istituto Bancario Italiano* established a five-part test to determine jurisdiction under a conspiracy theory:

> [A] conspirator who is absent from the forum state is subject to the jurisdiction of the court, assuming he is properly served under state law, if the plaintiff can make a factual showing that: (1) a conspiracy to defraud existed; (2) the defendant was a member of that conspiracy; (3) a substantial act or substantial effect in furtherance of the conspiracy occurred in the forum state; (4) the defendant knew or had reason to know of the act in the forum state or that acts outside the forum state would have an effect in the forum state; and (5) the act in, or effect on, the forum state was a direct and foreseeable result of the conduct in furtherance of the conspiracy.[111]

Here, OTO failed to allege the third element of the alleged conspiracy— "a substantial act or substantial effect in furtherance of the conspiracy occurred in the forum state;" accordingly, any argument for jurisdiction over OW or VN under this theory fails.[112]

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[109] *Matthew v. Fl%20akt Woods Grp. SA*, 56 A.3d at 1027 (applying *Istituto Bancario,* 449 A.2d 210).

[110] *Istituto Bancario,* 449 A.2d at 222.

[111] *Id.* at 225.

[112] *See Matthew v. Fl%20akt Woods Grp. SA*, 56 A.3d at 1027 (applying *Istituto Bancario,* 449 A.2d 210); *Reid v. Siniscalchi*, 2018 WL 620475, at *14-15 (Del. Ch. Jan. 30, 2018) (applying *Istituto Bancario*, 449 A.2d at 225).

Failing to establish personal jurisdiction under the traditional two prong test, OTO argues the APA's forum selection clause binds OW and VN to this Court's jurisdiction.

4. *The APA's Forum Selection Clause*

While a valid forum selection clause in a contract may trigger this Court's jurisdiction, the parties against whom jurisdiction is asserted must be bound by that contract. Here, the APA contains a forum selection clause binding the parties, Omega and OTO, to Delaware's jurisdiction, but OW and VN are not parties to the APA.[113] Thus, the Court must consider whether OTO has established OW or VN should be so bound as non-signatories.

A non-signatory may be bound by a contractual forum selection clause when the elements of the *Capital Group* test are met:[114]

> (i) the agreement contains a valid forum selection provision;
>
> (ii) the non-signatory has a sufficiently close relationship to the agreement, either as an intended third-party beneficiary under the agreement or under principles of estoppel; *and*
>
> (iii) the claim potentially subject to the forum selection provision arises from the non-signatory's standing relating to the agreement.[115]

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[113] *See* APA at 1.

[114] *Cap. Grp. Cos.*, 2004 WL 2521295, at *5.

[115] *Fla. Chem. Co., LLC v. Flotek Indus., Inc.*, 262 A.3d 1066, 1090 (Del. Ch. 2021) (citing *Cap. Grp. Cos.,* 2004 WL 2521295, at *5).

Here, the first element of the *Capital Group* test is met because the existence of a valid forum selection clause in the APA is not contested. Accordingly, the Court considers whether OTO has met the second and third elements and concludes it has not.

a. The Sufficiently Close Relationship Element

The second element of the *Capital Group* test asks whether "the non-signatory has a sufficiently close relationship to the agreement—either as an intended third-party beneficiary under the agreement *or* under principles of estoppel"[116] In this respect, "[t]he contracting parties' intent governs whether a non-signatory is a third-party beneficiary."[117]

i. *Intended third party beneficiaries*

Section 8.08 of the APA expressly states there are no intended third-party beneficiaries:

> **No Third-Party Beneficiaries**. Except as provided in ARTICLE VII, this Agreement is for the sole benefit of the Parties and their respective successors and permitted assigns and nothing herein, express or implied, is intended to or shall confer upon any other Person or entity any legal or equitable right, benefit or remedy of any nature whatsoever under or by reason of this Agreement.[118]

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[116] *Fla. Chem. Co.*, 262 A.3d at 1090; *see Cap. Grp. Cos.*, 2004 WL 2521295, at *5 (emphasis added).

[117] *Curam, LLC v. Gray*, 2025 WL 733256, at *5 (Del. Super. Mar. 6, 2025) (citing *McClements v. Savage*, 2007 WL 4248481, at *1 (Del. Super. Nov. 29, 2007)).

[118] APA, § 8.08.

When, as here, a forum selection provision appears in a contract governed by Delaware law, Delaware's principles of contract interpretation apply.[119] "[T]he construction of contract language presents a question of law"[120] and the Court's "aim [is] to give effect to the parties' intent."[121] Applying an objective theory of contracts, Delaware courts first try to determine the parties' intent from the text within the four corners of the agreement.[122] In doing so, courts are mindful that "Delaware law upholds the freedom of contract and enforces as a matter of fundamental public policy the voluntary agreements of sophisticated parties."[123] Accordingly, "Delaware courts . . . enforce voluntary business dealings where [contract] terms are clear and unambiguous."[124] "Only where there are ambiguities may a court look to collateral

[119] *Merinoff*, 2017 WL 464525, at *3-7 (interpreting forum selection clauses "in accordance with the law chosen to govern the contract"); *Bonanno v. VTB Holdings, Inc.*, 2016 WL 614412, at *5 (Del. Ch. Feb. 8, 2016); *Ashall Homes Ltd. V. ROK Ent. Gp. Inc.*, 992 A.2d 1239, 1245 (Del. Ch. 2010).

[120] *Centene Corp. v. Accellion, Inc.*, 2022 WL 898206, at *5 (Del. Chan. Mar. 28, 2022) (citations omitted).

[121] *Id.* (citing *Weinberg v. Waystar, Inc.*, 294 A.3d 1039, 1044 (Del. 2023)).

[122] *Exit Strategy, LLC v. Festival Retail Fund BH, L.P.*, 326 A.3d 356, 364 (Del. 2024) (citing *Salamone v. Gorman*, 106 A.3d 354, 368 (Del. 2014)) and *Terrell v. Kiromic Biopharma, Inc.*, 2025 WL 249073, at *3 (Del. Jan. 21, 2025) (also citing *Salamone*, 106 A.3d at 368)).

[123] *FP UC Hldgs., LLC v. Hamilton*, 2020 WL 1492783, at *11 (Del. Ch. Mar. 27, 2020) (quoting *NAACO Indus., Inc. v. Applica Inc.*, 997 A.2d 1, 35 (Del. Ch. 2009)).

[124] *Id.* (internal quotation marks omitted).

circumstances."[125] The plain meaning of terms is given binding effect unless otherwise defined.[126]

The intent of Section 8.08 is clear and unambiguous. It expressly states there are no intended third-party beneficiaries under the APA. And even if the language were not so clear, the APA's third-party beneficiary provision is customized and disclaims all other parties not encompassed by the Article VII carve-out.[127] Thus, the Court concludes the parties to the APA contemplated and did not intend OW and VN be third-party beneficiaries of the APA.

ii. *Estoppel*

The principles of estoppel may be used to satisfy the closely related element under the *Capital Group* test "when 'the [non-signatory] party receives a direct

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[125] *Majkowski v. Amer. Imaging Management Servs., Inc.*, 913 A.2d 572, 581 (Del. Chan. 2006) (first citing *Citadel Hldg. Corp. v. Roven,* 603 A.2d 818, 822 (Del. 1992) and then citing *Eagle Indus., Inc. v. DeVilbiss Health Care, Inc.*, 702 A.2d 1228, 1232 (Del.1997)).

[126] *Terrell*, 2025 WL 249073, at *3 (first citing *Norton v. K-Sea Transp. P'rs L.P.*, 67 A.3d 354, 360 (Del. 2013), then citing *Lorillard Tobacco Co. v. Am. Legacy Found.*, 903 A.2d 728, 739 (Del. 2006); then citing *Wenske v. Blue Bell Creameries, Inc.*, 2018 WL 3337531, at *10 (Del. Ch. July 6, 2018), then citing Restatement (Second) of Contracts § 203(b) (Am. L. Inst. 1981) (teaching that "express terms are given greater weight than course of performance, course of dealing, and usage of trade"), and then citing 12 Richard A. Lord, *Williston on Contracts* § 34:5, Westlaw (database updated May 2025) ("Courts will generally accept the definition employed in the relevant industry unless those terms are legislatively or judicially defined. Moreover, if words in a contract have a special meaning or usage in a particular industry, then members of that industry are presumed to use the words in that special way. . .")).

[127] APA, § 8.08; *see also Loc. Home Care Partners, LLC v. Home Care & Staffing Sols.*, LLC, 2025 WL 2393084, at *11 (Del. Super. Aug. 18, 2025) (holding personal jurisdiction was not established through third-party beneficiary status where a customized third-party beneficiary provision established the intent of the contracting parties to exclude all others from being considered third-party beneficiaries not within the narrow exception).

benefit from the agreement or . . . it was foreseeable that the party would be bound by the agreement.'"[128] "The two tests are disjunctive."[129]

The Direct Benefit Test

OTO argues the OW and VN Notes are closely related to the APA under the direct benefit test. That is, by accepting OTO's promise to assume their debt under the APA, OW and VN should be estopped from denying other obligations imposed by the APA.[130] In opposition, OW and VN argue the APA did not confer a direct benefit upon them, thus, the closely related element of the *Capital Group* test is not satisfied.[131]

"In general, a non-signatory is estopped from refusing to comply with a forum selection clause when she receives a 'direct benefit' from a contract containing a forum selection clause."[132] "The direct benefit may arise at the time of contracting, or a party may accept the benefits of an agreement after it was executed."[133] "Both

[128] *Curam*, 2025 WL 733256, at *6 (quoting *In re Bracket Holding Corp. Litig.*, 2017 WL 3283169, at *15 (Del. Super. July 31, 2017)); *see also Aviation West Charters v. Freer*, 2015 WL 5138285, at *9-10 (Del. Super. Ct. July 2, 2015); *Golden v. ShootProof*, 2023 WL 2255953, at *7.

[129] *Fla. Chem. Co.*, 262 A.3d at 1090 (citing *Neurvana Med., LLC v. Balt USA, LLC*, 2019 WL 4464268, at *1 (Del. Ch. Sept. 18, 2019)).

[130] OTO Opp. at 14-15.

[131] D.I. 50, Third-Party Defendant OW's Reply Brief in Support of Third Party-Defendant's Mot. to Dismiss Amended Third Party Complaint ["OWR"] at 10-13; D.I. 47 VN's Reply Brief in Further Support of Third-Party Defendant's Motion to Dismiss ["VNR"] at 5-9.

[132] *Fla. Chem. Co.*, 262 A.3d at 1090–91 (quoting *Cap. Grp. Cos.*, 2004 WL 2521295, at *6).

[133] *Id.* at 1091 (quoting *Cap. Grp. Cos.*, 2004 WL 2521295, at *6 n. 40).

pecuniary and nonpecuniary benefits [are] sufficient to satisfy this test."[134] But "[t]he mere contemplation of a benefit does not directly confer one."[135] Instead, "to be bound by forum selection clauses, non-signatories must *actually receive* a benefit under or by way of the contract."[136] Under Delaware precedent, direct benefits from contracts have been found where non-signatories received: stock transfers, lucrative leases, a seat on a board of directors, or cash.[137] "In such case[s], an estoppel may arise in light of the [non-signatory's] knowing acceptance of the benefits of the performance of the contract."[138] Conversely, indirect benefits have been deemed insufficient to satisfy the test.[139] Where a benefit "only materializes through a separate agreement," it is considered indirect.[140]

In *Curam, LLC v. Gray*, this Court held that a non-signatory to a contract does not incur a direct benefit where a right to such benefit existed before an agreement was executed.[141] In *Curam*, a company and its leases were acquired.[142]

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[134] *Id.* (citing *Neurvana,* 2019 WL 4464268, at *4).

[135] *Id.*

[136] *Sustainability Partners LLC v. Jacobs*, 2020 WL 3119034, at *6 (Del. Ch. June 11, 2020) (citations omitted) (emphasis added).

[137] *Id.* (citations omitted).

[138] *Id.*

[139] *Fla. Chem. Co.*, 262 A.3d at 1091 (citing *Neurvana*, 2019 WL 4464268, at *4).

[140] *Chumash Cap. Invs., LLC v. Grand Mesa Partners, LLC*, 2024 WL 1554184, at *8 (Del. Super. Apr. 10, 2024) (quoting *Neurvana,* 2019 WL 4464268, at *4).

[141] *Curam*, 2025 WL 733256, at *6 (Del. Super. Mar. 6, 2025).

[142] *Id.* at *2.

As part of the transaction, a non-signatory extended an option for the seller to purchase the properties leased by the company and reduced the rental obligations thereof.[143] This Court held the agreement did not bestow a direct benefit upon a non-signatory because "the sale did not provide [the non-signatory] with a benefit he did not already have."[144] The court specifically rejected the buyer's argument that because he made more timely rent payments, a direct benefit was bestowed upon the non-signatory.[145]

OW and VN did not receive a direct benefit from the APA. First, Omega's debts to OW and VN pre-date the APA and did not create a new benefit. Section 2.03 of the APA required OTO to assume certain liabilities from Omega, including the OW and VN Debts. Thus, the APA shifted the burden of repaying existing debts from Omega to OTO. This benefitted Omega because it was no longer required to pay the Debts, but it did not directly benefit OW or VN because it merely restructured payments to which they were already entitled. Second, in order to be direct, the benefit had to have been received under or by way of the APA.[146] Any benefit OW or VN received materialized through separate agreements, the VN and

[143] *Id.*

[144] *Id.* at *6.

[145] *Id.*

[146] *Golden v. ShootProof*, 2023 WL 2255953, at *7 (quoting *Sustainability Partners*, 2020 WL 3119034, at *6).

OW Promissory Notes, and are thus indirect.[147] Third, in *Curam,* this Court rejected the argument OTO now makes that the likelihood a non-signatory would be more timely paid is a direct benefit.[148] Finally, even assuming OTO's assumption of Omega's liabilities might indirectly benefit OW and VN, by giving them a greater chance of repayment, there was no benefit realized here because OTO either missed payments under the Notes (or didn't pay them at all) and now seeks declaratory judgment arguing the Notes are void.

The Foreseeability Test

That leaves foreseeability as the sole avenue for OTO to argue a close relationship with the APA by estoppel. Yet "Delaware courts apply the foreseeability test cautiously."[149] Foreseeability can only be the basis to satisfy the closely related test when:

> a non-signatory defendant seeks to enforce a forum selection clause against a signatory plaintiff; or
>
> where a controlled non-signatory, who bears a clear and significant connection to the subject matter of the agreement, could be manipulated by controller signatories in an "end-run" around the agreement's forum selection clause.[150]

[147] *Id.* (quoting *Sustainability Partners*, 2020 WL 3119034, at *6).

[148] *Curam*, 2025 WL 733256, at *6.

[149] *Fla. Chem. Co.*, 262 A.3d at 1092 (citing *Neurvana*, 2019 WL 4464268, at *6).

[150] *Loc. Home Care Partners*, 2025 WL 2393084, at *11 (citing *Golden v. ShootProof*, 2023 WL 2255953, at *7 (internal quotations omitted) (citations omitted)).

OTO cannot satisfy the closely related test through foreseeability because the facts do not support that argument. OW and VN are not the parties seeking to enforce the APA's forum selection clause, nor are they subsidiaries of OTO or Omega.

Failing to show OW or VN are closely related to the APA as intended beneficiaries or by estoppel, OTO has not established a basis to bind OW or VN to the forum selection clause in the APA under the second prong of the *Capital Group* test. The *Capital Group* tests elements are conjunctive;[151] therefore, the Court could decline analysis of the third element but does here so for completeness.

b. The Arising from the Agreement Element

The third element of the *Capital Group* test requires that "the claim potentially subject to the forum selection provision arises from the non-signatory's standing relating to the agreement."[152] OTO argues its claim for declaratory relief against both OW and VN arises from the APA, whereas, OW and VN argue it does not.[153] The Court agrees with OW and VN.

The Chancery Court's analysis in *Florida Chemical Company* provides guidance for this Court's decision on the third prong. Determining whether the claim is in the scope of the forum selection provision requires a "claim-by-claim

[151] *In re Bracket Holdings*, 2017 WL 3283169, at *15.

[152] *Cap. Grp. Cos.*, 2004 WL 2521295, at *5.

[153] OWR at 12-13; VNR at 9-12.

analysis.[154] Utilizing the *Capital Group* test, the Court of Chancery weighed if "the claim potentially subject to the forum selection provision [arose] from the non-signatory's standing relating to the agreement.[155] Applying those standards here, the Court specifically asks if the "underlying agreement" created the "rights and obligations" material to the claim asserted.[156]

The claim asserted by OTO against OW and VN arises from their standing relating to the OW and VN Notes, not the APA. Here, the parties to the APA, Omega and OTO, could have chosen to incorporate the OW Note and First VN Note by reference, but did not. Instead, OTO chose to execute separate agreements that restructured the liabilities OTO agreed to assume under the APA. OTO's payment obligations and OW's and VN's entitlement to receive those payments arise directly from the Notes—not the APA. As evidenced by the pending Canadian and Oregon Actions, the OW and VN Notes are actionable without the APA. If the "rights and obligations" to force payment were present in the APA then this would not be feasible.[157] Further, that OTO proceeded to execute the Second VN Note and partially perform on it—after it concluded Omega breached the APA—undercuts

[154] *Fla. Chem. Co.*, 262 A.3d at 1082–83.

[155] *Id.* at 1090 (citing *Cap. Grp. Cos.*, 2004 WL 2521295, at *5).

[156] *Id.* at 1082–83 (quoting *Parfi Hldg. AB v. Mirror Image Internet, Inc.*, 817 A.2d 149, 151 (Del. 2002)).

[157] *Id.*

OTO's argument the APA is controlling. In other words, if the APA was breached, and performance thereunder was unwarranted, there is no factual or logical explanation for OTO to reaffirm its commitment by executing the Second VN Note. Finally, OTO's heavy reliance on the Court of Chancery's decision in *Weygant v. Weco*,[158] is misplaced. In *Weygant*, the parties did not dispute the third element of the *Capital Group* test had been met;[159] rather, the Court focused its analysis on the second element, the closely related test direct benefit and foreseeability analyses.

Based upon the plain text of the APA, as well as OTO's failure to meet the second and third elements of the *Capital Group* test, OTO has not established a basis for this Court to bind VN and OW, two non-signatories to the APA, to the forum selection clause set forth therein. It follows that OTO has failed to satisfy its burden of establishing *prima facie* evidence of either a statutory or contractual basis for this Court to exercise personal jurisdiction over OW and VN.

Accordingly, OW'S Motion to Dismiss the Third-Party Complaint and VN's Motion to Dismiss the Third-Party Complaint are both **GRANTED**.

[158] 2009 WL 1351808 (Del. Ct. Chan. May 14, 2009).

[159] *Wegant,* 2009 WL 1351808, at *4, n. 16.

B. Venue and Failure to State a Claim

Having found that this Court lacks personal jurisdiction over them, OW's and VN's arguments to dismiss under 12(b)(3) based on improper venue and 12(b)(6) based upon OTO's alleged failure to state a viable claim, are moot.

C. Proposed Amendment to the Third-Party Complaint

Pursuant to Superior Court Civil Rule 15(a), "leave shall be freely given when justice so requires,"[160] "unless there is evidence of undue delay, bad faith or dilatory motive on the part of the movant, repeated failure to cure deficiencies, prejudice, futility, or the like."[161] Though VN argues OTO's Second Motion to Amend should be denied for bad faith and prejudice, this Court finds futility to be the most crucial factor.

The Court denies motions to amend a complaint when the proposed amendments fail to correct jurisdictional issues, giving rise to inevitable dismissal. In *Sokol Holdings, Inc. v. Dorsey & Whitney,* a plaintiff sought leave to amend a complaint to include an additional defendant and assert a malpractice claim.[162] The Court focused on whether such would cure jurisdictional deficiencies and concluded

[160] Del. Super. Ct. Civ. R. 15(a).

[161] *Earth Pride Organics, LLC v. Corona-Orange Foods, Intermediate Holdings, LLC*, 2024 WL 5199391, at *5 (Del. Super. Dec. 20, 2024) (quoting *Pettit v. Counter Life Homes, Inc.*, 2006 WL 2811707, at *1 (Del. Super. Oct. 3, 2006)).

[162] *Sokol Holdings, Inc. v. Dorsey & Whitney, LLP*, 2010 WL 599330, at *2, 4–5 (Del. Super. Feb. 19, 2010).

the proposed amendment could not satisfy plaintiff's burden of showing Delaware's Long-Arm statute authorized the Court to exercise personal jurisdiction over a non-resident defendant.[163] Accordingly, the Court denied plaintiff's motion for leave to amend its complaint.[164] Likewise, in *Ciabattoni v. Teamsters*, a plaintiff sought leave to amend a complaint to include new defendants—both non-residents—including new evidence under the conspiracy theory of jurisdiction (conspiring to tortiously injure and defame).[165] The evidence included in the proposed amendment was a single photograph accompanied by a comment on Facebook.[166] The Court held the amendment did not establish more than just a working relationship and, therefore, could not possibly meet the threshold for conspiracy theory of jurisdiction.[167] Finding plaintiff's amended complaint was futile because it failed to correct jurisdictional issues, the Court denied leave to amend.[168]

So too, OTO's proposed amended complaint does not cure its jurisdictional deficiencies. At best, the proposed amendment is an attempt to resolve deficiencies in OTO's Third-Party Complaint related to its statement of a claim. Accordingly, because OTO's proposed amendment is futile and OTO has not established a legal

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[163] *Id.*

[164] *Id.* at *4–5.

[165] *Ciabattoni v. Teamsters Loc. 326*, 2017 WL 3175617, at *3 (Del. Super. July 25, 2017).

[166] *Id.*

[167] *Id.*

[168] *Id.*

basis upon which the court can exercise personal jurisdiction over VN or OW,[169] the Second Motion to Amend is **DENIED**.

IV. CONCLUSION

OTO's third-party action filed in Delaware against nonresident defendants, OW and VN, must be dismissed for lack of personal jurisdiction because the forum selection clause in the APA does not establish jurisdiction over them as non-signatories, and no other basis for personal jurisdiction has been established. As the Court lacks personal jurisdiction, it does not rule on the merits of OW's and VN's Rule 12(b)(3) motions to dismiss on grounds of improper venue under the doctrine of *forum non coneviens* or the sufficiency of third-party plaintiff's declaratory judgment claim under Rule 12(b)(6). Finally, the Court concludes OTO's proposed amendment the Third-Party Complaint would be futile because it does not cure fundamental jurisdictional issues. Accordingly, OW and VN's motions to dismiss under Superior Court Civil Rule 12(b)(2) are **GRANTED** and OTO's motion to amend the third-party complaint is **DENIED**.

IT IS SO ORDERED.

/s/ *Kathleen M. Vavala*
The Honorable Kathleen M. Vavala

[169] *Econ. Steel Bldg. Techs*, 2020 WL 1866869, at *1 (citing *AeroGlobal Cap. Mgmt.*, 871 A.2d at 437).