IN THE SUPERIOR COURT OF THE STATE OF DELAWARE

UNITED CAPITAL FINANCIAL ADVISORS, LLC,	)	
Plaintiff,	)	
v.	)	C.A. No. N25C-12-053 SKR
APOLLON WEALTH MANAGEMENT LLC,	)	
Defendant.	)	

Submitted: May 22, 2026
Decided: June 16, 2026

Upon Consideration of Defendant's Motion to Dismiss:

DENIED.

MEMORANDUM OPINION AND ORDER

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RENNIE, J.

I. INTRODUCTION

This action arises out of the alleged breach of individual employment agreements following the sale of a financial services firm. Upon learning that Goldman Sachs intended to sell Plaintiff United Capital Financial Advisors, LLC to another entity, several United Capital employees resigned. Shortly thereafter, those employees accepted employment with Defendant Apollon Wealth Management, LLC. United Capital contends that these employees—while still employed by United Capital—coordinated with Apollon to systematically poach United Capital's clients.

United Capital subsequently initiated arbitration before the Financial Industry Regulatory Authority ("FINRA") against its former employees. United Capital invited Apollon to participate in arbitration, but Apollon declined. Consequently, United Capital commenced this litigation.

Apollon now moves to dismiss the complaint on the grounds of *forum non conveniens*. Because Apollon has failed to demonstrate that litigation in this forum will result in overwhelming hardship, the motion is **DENIED**.

II. BACKGROUND[1]

A. The Parties

Plaintiff United Capital Financial Advisors, LLC ("United Capital") is a Delaware limited liability company[2] that provides financial services to high-net-worth clients.[3] United Capital previously operated under the trade name "Goldman Sachs Personal Financial Management."[4] Its principal place of business is allegedly located in California.[5]

Defendant Apollon Wealth Management, LLC ("Apollon") is a Delaware limited liability company[6] with a principal place of business in South Carolina.[7]

B. Factual Background

On May 16, 2019, Goldman Sachs entered into an agreement to acquire United Capital, after which United Capital operated as "Goldman Sachs Personal Financial Management."[8] On August 21, 2023, during an internal meeting, several

[1] The facts are drawn from the allegations in the complaint and the documents incorporated therein. *See* D.I. 1 ("Compl."). These allegations are presumed to be true solely for the purposes of this motion. Under the applicable standard of review, the Court may also consider other evidence, such as the parties' briefing. *See* D.I. 6 ("Mot."); D.I. 18 ("Opp'n"); D.I. 23 ("Reply").
[2] Compl. ¶ 17.
[3] *Id.* at ¶ 23.
[4] *Id.* at ¶ 22.
[5] *See* Mot., Ex. A (United Capital Financial Advisers LLC's application for registration with California's Secretary of State).
[6] Compl. ¶ 18.
[7] Mot. ¶¶ 4, 9.
[8] Compl. ¶¶ 21–22.

United Capital employees (the "Former Employees") [9] learned that Goldman Sachs intended to sell United Capital to Creative Planning, LLC.[10]

On September 22, 2023, allegedly at the prompting and inducement of Apollon, the Former Employees resigned from United Capital.[11] Shortly thereafter, the Former Employees began working for Apollon.[12] United Capital asserts that the Former Employees violated their respective contractual and post-employment obligations by migrating clients to Apollon.[13] In support of this claim, United Capital points to an outflow of approximately $470 million in assets under management within the sixteen weeks following the Former Employees departures.[14] United Capital alleges, upon information and belief, that the majority of these assets were transferred directly to Apollon.[15]

C. Procedural History

Prior to filing this action, United Capital initiated FINRA arbitration proceedings against the Former Employees in their respective home states.[16] Apollon was invited to join the arbitration proceedings but declined to participate.[17]

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[9] *Id.* at ¶ 1. The Former Employees are Aymen Kaboub, Owen Hayes Malcolm, Jason Rosener, Melissa Cummings Hallmark, Kassi Ann Hyde, and Robert Yu. *Id.*
[10] *Id.* at ¶ 4.
[11] *Id.* at ¶¶ 6, 8.
[12] *Id.* at ¶ 7.
[13] *See, e.g., id.* at ¶¶ 8–12.
[14] *Id.* at ¶ 13.
[15] *Id.* at ¶ 13.
[16] *See id.* at ¶ 15.
[17] *Id.* at ¶ 15.

United Capital filed its complaint in this Court on December 3, 2025,[18] originally asserting seven counts: tortious interference with contract (Count I),[19] tortious interference with prospective economic advantage (Count II),[20] aiding and abetting breach of fiduciary duty (Count III),[21] trade secret misappropriation (Count IV),[22] aiding and abetting fraudulent concealment/non-disclosure (Count V),[23] unjust enrichment (Count VI),[24] and unfair competition (Count VII).[25]

Apollon moved to dismiss this action on *forum non conveniens* grounds,[26] or in the alternative, to transfer this matter to the Court of Chancery pursuant to 10 *Del. C.* § 1902.[27] United Capital opposed dismissal,[28] but resolved the alternative request for a transfer by voluntarily dismissing its equitable claims (Counts III and VI).[29] Apollon filed its reply brief,[30] and the Court heard oral argument on May 22, 2026.

At oral argument, relying upon United Capital's representations that it would not seek to amend the complaint to reinstate Counts III and VI, Apollon conceded that its alternative motion to transfer was moot. Accordingly, the only remaining

[18] Compl.
[19] Compl. ¶¶ 78–88.
[20] *Id.* at ¶¶ 89–94.
[21] *Id.* at ¶¶ 95–104.
[22] *Id.* at ¶¶ 105–116.
[23] *Id.* at ¶¶ 117–130.
[24] *Id.* at ¶¶ 131–136.
[25] *Id.* at ¶¶ 137–140.
[26] Mot. ¶¶ 5–14.
[27] *Id.* at ¶¶ 15–17.
[28] *See* Opp'n.
[29] *Id.* at 1 n.1. United Capital's voluntary dismissal was filed on May 1, 2026. D.I. 27.
[30] Reply.

issue before the Court is whether this action should be dismissed under the doctrine of *forum non conveniens*.

III. STANDARD OF REVIEW

A motion to dismiss or stay on the basis of *forum non conveniens* is considered under Superior Court Civil Rule 12(b)(3).[31] In ruling on a motion under this rule, the Court is not confined to the face of the pleadings and may properly consider evidence extant to the complaint.[32] The decision to grant or deny a *forum non conveniens* motion rests with the sound discretion of the Court, guided by an orderly and logical deductive process.[33]

Where the Delaware action is the first-filed suit between the identical parties, the Court evaluates the motion under the well-established *Cryo-Maid* framework.[34] Under the standard, a plaintiff's choice of forum is entitled to significant deference.[35] To disrupt that choice, the moving defendant bears a heavy burden to overcome the presumption by demonstrating that litigating in Delaware will impose an "overwhelming hardship."[36]

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[31] *Arrowood Indem. Co. v. AmerisourceBergen Corp.*, 2023 WL 2726924, at *8 (Del. Super. Mar. 30, 2023).
[32] *See Simon v. Navellier Series Fund*, 2000 WL 1597890, at *5 (Del. Ch. Oct. 19, 2000).
[33] *Cresa Glob. Inc. v. Chirisa Cap. Mgmt. (US) LLC*, 2025 WL 53168, at *2 (Del. Super. Jan. 9, 2025) (citing *CVS Opioid Ins. Litig.*, 2022 WL 3330427, at *3 (Del. Super. Aug. 12, 2022)).
[34] *Id*.
[35] *Id.*
[36] *Id.*

The Court balances this burden by analyzing the six *Cryo-Maid* factors: (1) the relative ease of access to proof; (2) the availability of a compulsory process for witnesses; (3) the possibility to view the premises; (4) whether the controversy is dependent upon Delaware law; (5) the pendency or non-pendency of a similar action in another jurisdiction; and (6) all other practical problems that would make the trial easy, expeditious, and inexpensive.[37]

These factors are not evaluated in isolation; rather the defendant must show that the combined weight of these factors produces a hardship so manifest that it outweighs the plaintiff's right to suit in Delaware.[38]

IV. ANALYSIS

A. The Relative Ease of Access to Proof

Although both parties are Delaware entities,[39] none of the operative events giving rise to this action occurred within the state of Delaware.[40] Apollon's principal place of business is located in South Carolina,[41] and the related arbitration proceedings against the Former Employees are currently pending across multiple jurisdictions, specifically Georgia, Illinois, and Colorado.[42]

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[37] *See GXP Cap., LLC v. Argonaut Mfg. Servs., Inc.*, 253 A.3d 93, 101 (Del. 2021). The Court addresses the *Cryo-Maid* factors in the sequence presented in the parties' briefing. *See* Mot. ¶ 7.
[38] *Martinez v. E.I. DuPont de Nemours and Co., Inc.*, 86 A.3d 1102, 1104 (Del. 2014) (citing *Chrysler First Bus. Credit Corp. v. 1500 Locust Ltd. P'ship*, 669 A.2d 104, 105 (Del. 1995)).
[39] Compl. ¶¶ 17–18.
[40] *See* Mot. ¶¶ 9–10.
[41] *Id.* at ¶ 4.
[42] Opp'n 5 (citing Mot. ¶ 13).

Consequently, the documentary and digital evidence relevant to this controversy is distributed nationally, meaning no single forum possesses a distinct geographical advantage. It is well established in Delaware jurisprudence that modern technological advancements have significantly alleviated the logistical burdens of extracting and producing evidence in complex commercial disputes.[43] Given the widespread digital availability of modern corporate records, the dispersion of information across the country does not subject Apollon to an overwhelming hardship. Accordingly, this factor is neutral.

B. The Availability of Compulsory Process

To prevail on this factor, the moving party must establish that an alternative jurisdiction would provide a substantial improvement regarding the number of witnesses subject to compulsory process.[44] Crucially, a defendant cannot rely on generalized assertions; it must identify the specific inconvenienced non-party witnesses and articulate the precise substance of their testimony.[45] Apollon notes that neither the Former Employees nor any of the Apollon personnel involved in their recruitment reside or work in Delaware.[46]

Under Delaware law, however, the employees, officers, directors, or managing agents of an adverse corporate party are presumptively within that party's

[43] *Harris v. Harris*, 2023 WL 355179, at *11 (Del. Ch. Jan. 23, 2023).
[44] *Id.* at *12.
[45] *Vichi v. Koninklijke Philips Elecs. N.V.*, 2009 WL 4345724, at *13 (Del. Ch. Dec. 1, 2009).
[46] Mot. ¶ 9.

control.[47] Such witnesses are deemed available for trial without the necessity of a subpoena because they are expected to appear at their employers' request.[48] Because United Capital's complaint alleges that Apollon currently employs the Former Employees,[49]Apollon can procure their attendance. While the complete absence of third-party witnesses within Delaware may slightly disfavor this forum, Apollon has failed to demonstrate that the lack of compulsory process for any unidentified non-party witnesses rises to the level of overwhelming hardship.[50]

C. The Possibility of Viewing the Premises

The claims asserted in this action involve corporate torts and commercial misconduct. Because there are no physical structures or real property to inspect, this factor is irrelevant to the Court's *forum non conveniens* analysis.

D. Dependence on Delaware Law

This factor focuses primarily on Delaware's interest in regulating the underlying dispute.[51] Apollon contends that United Capital's claims are derived from, and dependent upon, the Former Employees' individual employment agreements, which contain New York choice-of-law provisions.[52] Conversely,

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[47] *Hamilton P'rs, L.P. v. Englard*, 11 A.3d 1180, 1214–16 (Del. Ch. 2010); *Vichi*, 2009 WL 4345724 at *13.
[48] *Vichi*, 2009 WL 4345724 at *13 (also considering the use of depositions as a means to collect testimony of employee-fact witnesses).
[49] Compl. ¶ 14.
[50] *Vichi*, 2009 WL 4345724 at *13.
[51] *GXP Cap., LLC v. Argonaut Mfg. Servs., Inc.*, 253 A.3d 93, 104–05 (Del. 2021).
[52] Mot. ¶ 12.

United Capital argues that it asserts independent claims under Delaware statutory and common law, and underscores that Apollon is not a signatory to the underlying employment agreements.[53]

The Court need not definitively resolve the governing choice of law issues at this preliminary stage. Delaware courts routinely and capably apply the substantive laws of foreign jurisdictions when presiding over commercial cases.[54] The potential necessity of applying New York or other foreign law to certain claims is a run-of-the mill judicial exercise that does not compel, or even favor, dismissal.[55] Therefore, this factor is neutral.

E. Pendency of Similar Actions

This factor evaluates the existence of parallel litigation in another forum involving substantially similar parties and issues to promote judicial efficiency, while ensuring that a plaintiff does not lose access to an appropriate forum.[56] Where no prior parallel action is pending between the same parties, this factor is assigned significant weight and can only be overcome by a showing of the most compelling circumstances.[57]

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[53] Opp'n 6.
[54] *Everphone, Inc. v. Go Tech. Mgmt., LLC*, 2023 WL 7996560, at *6 (Del. Super. Nov. 17, 2023).
[55] *Id*.
[56] *Focus Fin. Prs., LLC v. Holsopple*, 250 A.3d 939, 954 (Del. Ch. 2020). *See also Ison v. E.I. DuPont de Nemours and Co., Inc.,*729 A.2d 832, 844–45 (Del. 1999) (discussing prior pending actions).
[57] *Everphone*, 2023 WL 7996560, at *7.

Apollon conceded at oral argument that there is no other pending court action between these specific parties. Apollon nevertheless argues that the Court should treat United Capital's active FINRA arbitrations against the Former Employees in Georgia, Illinois, and Colorado as the functional equivalent of prior pending actions.[58] Apollon maintains that, despite its own refusal to participate in those arbitrations,[59] the factual issues are identical and the Former Employees will serve as key witnesses here.[60]

While a binding arbitration proceeding can sometimes be treated as a prior pending action under a *forum non conveniens* analysis,[61] Apollon has failed to produce any legal authority suggesting that an arbitration between a plaintiff and nonparty individuals satisfies this standard. Although this action shares a common factual nucleus with the FINRA arbitrations, those proceedings are not a substitute for an active court docket wherein United Capital can legally assert its claims against Apollon. Because this is the only active lawsuit between these two parties, this factor strongly opposes dismissal.

F. All Other Practical Problems

Under this catch-all factor, Apollon points to the logistical expense and general inconvenience associated with transporting corporate representatives and

[58] Mot. ¶ 13; Reply 2–3.
[59] Compl. ¶ 15.
[60] Reply 2–3.
[61] *See LG Elecs., Inc. v. InterDigital Commc'ns, Inc.*, 114 A.3d 1246, 1252–53 (Del. 2015).

witnesses to Delaware.[62] While litigating this matter in California or South Carolina might yield marginal cost savings for one of the parties, modern travel and communication methods significantly reduce the friction of out-of-state litigation. Incremental financial expenses and logistical inconveniences do not equate to the manifest, overwhelming hardship necessary to strip a plaintiff of its chosen forum. This factor weighs only minimally in favor of dismissal.

V. CONCLUSION

After balancing the *Cryo-Maid* factors in their totality, the Court concludes that Apollon failed to sustain its heavy burden of demonstrating that litigating this dispute in Delaware will impose an overwhelming hardship. Accordingly, Apollon Wealth Management, LLC's Motion to Dismiss on the grounds of *forum non conveniens* is **DENIED**.

IT IS SO ORDERED.

Sheldon K. Rennie, Judge

[62] Mot. ¶ 14.