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IN THE SUPREME COURT OF THE STATE OF DELAWARE

PETER R. HALL, Plaintiff-Below, Appellant, v. MARITEK CORPORATION, MICHAEL J. GEOFFREY FULTON, and DAVID H. YOUNG, Defendants-Below, Appellees,	)	No. 379, 2017 Court Below: The Superior Court of the State of Delaware, C.A. No. 08C-07-123 DCS

DEFENDANTS'-APPELLEES' ANSWERING BRIEF

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NATURE OF PROCEEDINGS

For a decade, Plaintiff-Appellant Peter R. Hall has engaged in litigation in a half-dozen different courts across two continents relating to a failed attempt to purchase land in the Bahamas. Despite repeated adverse judgments, Mr. Hall has redoubled his efforts, "discovering" previously-unknown claims and facts before each court. Mr. Hall has posited an alleged pattern of corruption in the Bahamian courts, purportedly vital unproduced documents in contravention of an order of the Court of Chancery and a broad alleged fraudulent scheme by Defendants-Appellees Michael J. Geoffrey Fulton and David H. Young.

Yet Mr. Hall cannot escape one central fact: the Bahamian court determined that, as a matter of law, there was never a valid contract for the purchase of land. This conclusion was affirmed by each court that heard Mr. Hall's renewed claims, and each court rejected Mr. Hall's appeal.

Mr. Hall now wants to continue his litigation assault in Delaware. Rather than litigating before the Bahamian courts or Privy Counsel in London (where Mr. Hall alleges separate acts of misconduct occurred), Mr. Hall filed his complaint in the Delaware Superior Court. And instead of heeding the advice of the Superior Court to bring his claims of misconduct in a more appropriate venue, or even assert an alleged breach of an order of the Court of Chancery before that court, Mr. Hall now seeks relief before this Court. As the Superior Court appropriately

determined, however, Delaware was and remains an inappropriate forum to litigate Mr. Hall's dispute.

The *Cryo-Maid* factors overwhelmingly supported dismissal of Mr. Hall's complaint. The standard under which this Court must review the Superior Court's determination—abuse of discretion—points to the singular conclusion that the dismissal of Mr. Hall's complaint should be affirmed.

While the Superior Court found sufficient basis to dismiss the complaint on *forum non conveniens* grounds, this Court can independently affirm the dismissal under Defendants' alternative theory of *res judicata* and/or collateral estoppel and improper claim splitting. Under English common law, the substantive law governing the preclusion analysis, the prior determination (affirmed by the appellate courts) that there was never a valid contract bars Mr. Hall's claims.

SUMMARY OF ARGUMENT

1. Denied. The Superior Court properly considered the *Cryo-Maid* factors, determined that there was minimal nexus between Mr. Hall's allegations and Delaware, and therefore acted within its sound discretion in dismissing Mr. Hall's Second Amended Complaint on *forum non conveniens* grounds.

2. Denied. The Superior Court properly determined that the specific misconduct that Mr. Hall alleges supported his claims before the Superior Court was subject to prior litigation before the courts of the Bahamas and the United Kingdom, or subject to a stipulated agreement Mr. Hall entered into before the Delaware Court of Chancery. To the extent that Mr. Hall believes that Defendants-Appellees breached an order of the Court of Chancery, the Superior Court noted that his claim should be brought before that court.

3. Defendants admit that Mr. Hall has alleged that Messrs. Fulton and Young violated Delaware criminal law, but deny that any such violations occurred. Mr. Hall's allegations relate to a stipulated order agreed to by Mr. Hall and entered by the Court of Chancery. Defendants complied with the terms of the order, and no court has found any violation by Defendants. Moreover, to the extent that Mr. Hall contends that an order of the Court of Chancery has been violated, that is the forum in which Mr. Hall should present his claims. The Superior Court properly exercised its discretion in dismissing Mr. Hall's claims.

4. Defendants admit that Mr. Hall has alleged that Messrs. Fulton and Young violated Delaware criminal law, but deny that any such violations occurred. Mr. Hall's allegations relate to a stipulated order agreed to by Mr. Hall and entered by the Court of Chancery. Defendant complied with the terms of the order, and no court has found any violation by Defendants. Moreover, to the extent that Mr. Hall contends that an order of the Court of Chancery has been violated, that is the forum in which Mr. Hall should present his claims. The Superior Court properly exercised its discretion in dismissing Mr. Hall's claims.

5. Defendants admit that Mr. Hall has alleged that Messrs. Fulton and Young violated an order of the Court of Chancery, but deny that any such violations occurred. Mr. Hall's allegations relate to a stipulated order agreed to by Mr. Hall and entered by the Court of Chancery. Defendant complied with the terms of the order, and no court has found any violation by Defendants. Moreover, the Court of Chancery is the proper venue for Mr. Hall's contention that an order of that Court has been violated. The Superior Court properly exercised its discretion in dismissing Mr. Hall's claims.

6. Defendants admit that they have not alleged any specific hardship associated with presenting English common law, beyond Delaware's policy of deferring to a foreign jurisdiction where that jurisdiction has a stronger interest in the outcome of the dispute. *See Martinez v. E.I. du Pont de Nemours & Co.*, 86

A.3d 1102, 1110-11 (Del. 2014) (citing *TA Instruments-Waters, LLC v. Univ. of Conn.*, 31 A.3d 1204, 1207 (Del. Ch. 2011)). Among the many claims asserted in the Complaint, Mr. Hall alleges that Defendants committed "fraud" by, among other things, "[m]aking false representations to the Bahamian Government authorities to interfere with the business expectancy of [Mr. Hall]" and "[m]aking false representations in connection with the Bahamian litigation . . . ." (Compl. ¶ 401). Allegations of criminal conduct upon the Bahamian government and/or the courts of the Bahamas and the United Kingdom are the type that warrant deference to the foreign jurisdiction. *See Lisa, S.A. v. Mayorga*, 2009 WL 1846308, at *3-4 (Del. Ch. June 22, 2009) (dismissing on *forum non conveniens* grounds where alleged fraud and conspiracy occurred outside of Delaware), *aff'd*, 993 A.2d 1042 (Del. 2010). In support of Mr. Hall's assertion that English governing law is settled, he observes that there are operative cases "decided in 1843 and 1947." (Appellant's Opening Br. at 30-31). However, where little precedent exists after the 19th Century, it is wholly appropriate for Delaware to defer to the foreign jurisdiction to determine the current state of the law. *See Martinez*, 86 A.3d at 1108 (affirming Superior Court's dismissal on *forum non conveniens* grounds where the Delaware court would be forced to "decide complex and unsettled issues" of foreign law); *see also Taylor v. LSI Logic Corp.*, 1995 WL 405737, at *3 (Del. Ch. June 19, 1995) ("The public policy of Canada as expressed in its statutes

should be interpreted by its courts and not by the courts of Delaware where the inter-corporate relationship are entirely a create of law of the foreign jurisdiction.").

7. Defendants admit that they have not alleged any specific witnesses or potential testimony of such witnesses, but deny that Messrs. Fulton and Young, or the independent Maritek directors, would be subject to Delaware jurisdiction outside of their roles as directors of Maritek. *See* 10 *Del. C.* § 3114(a) ("service of process may be made . . . ***in any action or proceeding against such director . . . for violation of a duty in such capacity*** . . . .") (emphasis added); *see also Kelly v. McKesson HBOC, Inc.*, 2002 WL 88939, at *16 (Del. Super. Ct. Jan. 17, 2002) ("It appears then, that 10 *Del. C.* § 3114 only applies to lawsuits brought against a nonresident director of a Delaware corporation for acts performed as a director, which involve fiduciary duty violations. Section 3114 'does not confer personal jurisdiction over nonresident corporate directors simply on the basis of their status as directors of Delaware corporations.'" (footnotes and citations omitted)). However, as none of the parties (other than Maritek) are physically located in Delaware, and the alleged misconduct asserted by Mr. Hall occurred exclusively outside of Delaware, Defendants contend that almost *any* witness would be outside of Delaware's subpoena power.

8. Denied. While Defendants do not believe that an inspection of the premises would be required to resolve Mr. Hall's claims, Defendants deny that "discovery and a view of the premises do not present any burden . . . ." As the Superior Court noted, it may be necessary for an expert or other witness to inspect the land to determine the feasibility of Mr. Hall's plans. (Op. at 21-22).

9. Defendants admit that Mr. Hall has alleged corruption by the Supreme Court of the Commonwealth of the Bahamas, but deny that any such corruption occurred. Mr. Hall advanced his allegations of corruption in his appeal of the Bahamian action, which the Judicial Committee of the Privy Council in the United Kingdom rejected. The Superior Court properly exercised its discretion in dismissing Mr. Hall's claims.

10. Defendants admit that Mr. Hall has alleged that Defendants failed to produce documents as required under a stipulated order of the Court of Chancery, but deny that they failed to comply with the order. Mr. Hall advanced this same allegation in his appeal of the Bahamian action, which the Judicial Committee of the Privy Council in the United Kingdom rejected. The Superior Court properly exercised its discretion in dismissing Mr. Hall's claims.

STATEMENT OF FACTS

The following facts are alleged in Plaintiff-Appellant Peter R. Hall's Second Amended Complaint, recited in documents incorporated therein, incorporated into the briefing on Defendants-Appellees Maritek Corporation, Michael J. Geoffrey Fulton, and David H. Young's Motion to Dismiss, or a matter of public record.[1]

A. Litigation in the Bahamas and the United Kingdom

As described by the Superior Court in its August 25, 2017 Opinion (the "Opinion" or "Op."), this dispute arises from Mr. Hall's "disappointment that his plans (to develop a parcel of land that he thought he had purchased) failed to materialize" as a result of his failure to obtain required government permits necessary to complete the purchase of the property. *See* Op. at 1, 4. In October 2005, Maritek Bahamas, Ltd., a Bahamian corporation and a subsidiary of Defendant-Appellee Maritek Corporation ("Maritek"), brought an action against Mr. Hall in the Supreme Court of the Commonwealth of the Bahamas, captioned *Maritek Bahamas Limited v. Peter Robert Hall*, No. 2005/CLE/gen/001198

[1] "When considering a motion to dismiss, the court . . . may take judicial notice of publicly filed documents, such as documents publicly filed in litigation pending in other jurisdictions." *In re Career Educ. Corp. Deriv. Litig.*, 2007 WL 2875203, at *9 (Del. Ch. Sept. 28, 2007) (footnote omitted); *see also Prather v. Doroshow, Pasquale, Krawitz & Bhaya*, 2011 WL 1465520, at *1 n.2 (Del. Super. Ct. Apr. 14, 2011) ("For purposes of the instant motion to dismiss, this Court takes judicial notice of the federal docket of the Pennsylvania litigation and the foregoing decision of the Court of Appeals for the Third Circuit.").

(including appeals, the "Bahamian Litigation"), seeking, among other relief, a declaration that there had never been a valid contract between Maritek Bahamas and Mr. Hall. *See id.* at 3-4.

Mr. Hall originally initiated this action on July 14, 2008. (Trans. ID 20637907). On September 17, 2008, Defendants moved to dismiss this action or, in the alternative, to stay the action pending resolution of the Bahamian Litigation. (Trans. ID 21571586).

By opinion dated April 29, 2009, Judge Brady granted Defendants' motion to stay. (Trans. ID 24940292). Judge Brady noted:

> The Plaintiff filed claims for tortious interference with contract in this Court, against Fulton and Young, and Maritek. The threshold requirement for Plaintiff to state a claim for tortious interference with contract is, of course, demonstrating the existence of a valid contract. As stated previously, a final ruling from the Bahamian Courts that no contract existed between Plaintiff and [Maritek Bahamas] would effectively eviscerate the claims presently before the Court. However, no final judgment has been rendered and Plaintiff represents to the Court that he intends to appeal any adverse ruling by the Court of Appeal of the Bahamas to The Privy Council in London, England. Given the lack of finality with respect to the Bahamian Action, the Court is not in a position to evaluate the collateral effect of a final judgment from the Bahamian Courts. That being said, the most prudent course of action for this Court to take is to stay this case until such time as a final judgment is rendered in the Bahamian Action. When that occurs, this Court will be in a position to determine the collateral effect, if any, of that ruling.

(*Id.* at 7-8) (footnote omitted).

In a December 2008 judgment, the Bahamian court determined that "there is not and never has been a legally binding agreement between [Maritek Bahamas] and Hall for the sale and purchase of the property." (A157 ¶ 268). In rendering that judgment, the Bahamian court noted:

> By the close of cross examination of [Mr. Hall] it was clear that Hall's evidence on the seminal issues in this case were less than forthright, often discursive, obfuscating, and at times evasive. He was not a credible witness.

(*Id.* ¶ 140; *see also id.* ¶ 258 ("I found that the evidence of [Mr. Hall] discursive, evasive and at times clearly misleading. He was discredited on several issues during his lengthy cross examination. Mr. Hall relied heavily on documents which he sent to other persons, which raised issues which were not otherwise corroborated. At their highest, I found these documents to be self serving and of no probative value. [Mr. Hall's] evidence was also uncorroborated by documentary evidence and, in some instances, clearly contradicted documents exhibited during trial.")).

The Court of Appeal of the Commonwealth of the Bahamas affirmed the decision of the trial court by judgment entered September 12, 2011. (*See* A162). The Judicial Committee of the Privy Council in the United Kingdom further affirmed the trial court's ruling by judgment dated May 18, 2015. (*See* Appellant's App. A-001303-18).

B. Procedural Background

1. The Second Amended Complaint

Following resolution of the Bahamas Litigation, the stay in the Superior Court action was lifted by order dated July 13, 2016. (Trans. ID 59275234). Mr. Hall filed the operative Second Amended Complaint (the "Complaint" or "Comp.") on August 29, 2016. (Trans. ID 59483448).

Despite the prior judgments in the Bahamian Litigation, Mr. Hall asserted in Paragraph 1 of the Complaint:

> This action relates to a written agreement dated October 11, 2002 for the purchase of approximately 39 square miles of land on the Long Island, Bahamas, between plaintiff Peter Hall and Maritek Bahamas, Ltd. . . . , a wholly owned subsidiary of defendant Maritek Corporation . . . , a Delaware corporation (the "Hall Agreement").

(Comp. ¶ 1). Mr. Hall additionally asserted claims against Defendants for tortious interference with prospective business expectancy, fraud and civil conspiracy, fraud and intentional misrepresentation and willful and wanton conduct. All four counts related to the purported "Hall Agreement." Mr. Hall further acknowledged in his Supplemental Memorandum in Opposition to Defendants' Motion to Dismiss the Plaintiff's Second Amended Complaint (Trans. ID 60446674) (the "Opposition" or "Opp.") that his claims arose out of the Hall Agreement. (Opp. at 1).

2. Dismissal of the Complaint

On October 21, 2016, Defendants filed a motion to dismiss. (Trans. ID 59733365). On March 23, 2017, the Court entered an Order directing the parties to submit supplemental memoranda on Defendants' motion to dismiss. (Trans. ID 60376011). On April 7, 2017, Defendants submitted their supplemental brief. (Trans. ID 60445251). The motion to dismiss and the supplemental brief asserted that (1) the action was precluded by the doctrines of *res judicata* and/or collateral estoppel and the prohibition against claim splitting; (2) the claims in the action had been released; and (3) even if the Court were to determine that Mr. Hall was permitted to relitigate his claims, Delaware was not the appropriate forum.

On August 25, 2017—after holding oral argument and reviewing the parties' supplemental briefing—the Superior Court granted Defendants' motion to dismiss on the grounds of *forum non conveniens*. Recognizing that "a plaintiff's choice of forum is favored and should rarely be disturbed unless the chosen forum is inappropriate," (Op. at 13), the Court determined, on balance, the factors set out by this Court in *General Foods Corp. v. Cryo-Maid, Inc.*, 198 A.2d 681 (Del. 1964), *overruled in part by Pepsico, Inc. v. Pepsi-Cola Bottling Co. of Asbury Park*, 261 A.2d 520 (Del. 1969) supported dismissal. In particular, the Court found that: (1) "significant expenses are certain if litigation were to occur in Delaware," (Op. at 17) and "[a]llowing this case to remain in Delaware would be inconsistent with the

efficient administration of justice," (Op. at 19); (2) foreign law would seem to govern the underlying dispute, (Op. at 23); (3) numerous potential witnesses reside "in other countries and are outside of Delaware's subpoena power," (Op. at 20); and (4) while there was "technically 'no issue of prior pendency of the same action in another jurisdiction,'" the Complaint is "'substantially or functionally identical' to the prior ten years of litigation spanning three foreign countries," (Op. at 24). While the Court noted that certain of the *Cryo-Maid* factors supported Mr. Hall's choice of forum, no similar outstanding issues in other jurisdictions (Op. at 24), or were neutral, ability to view the land subject to the Hall Agreement (Op. at 21), the Court held that "expenses, practical problems, and the efficient administration of justice," as well as "the strong connection of the parties, witnesses, and the land to the Bahamas" all "favor *forum non conveniens* in this case," (Op. at 31). The Court accordingly dismissed the Complaint without addressing Defendants' arguments for dismissal based on *res judicata* and/or collateral estoppel and improper claim splitting, or release. (*See* Op. at 11 n.26). This appeal followed.

ARGUMENT

I. The Superior Court Correctly Dismissed the Complaint on *Forum Non Conveniens* Grounds.

A. Question Presented

Did the Superior Court abuse its discretion when it dismissed Mr. Hall's Complaint on the grounds of *forum non conveniens*? This argument was preserved in the trial court at Appellant's App. A-001214, A-001496-98.

B. Scope of Review

This Court reviews under the abuse of discretion standard a dismissal on the grounds of *forum non conveniens*. *Martinez*, 86 A.3d at 1104; *Warburg, Pincus Ventures, L.P. v. Schrapper*, 774 A.2d 264, 269 (Del. 2001). Under this standard, this Court "must affirm" if the Superior Court's findings and conclusions "are supported by the record and are the product of an orderly and logical [reasoning] process." *Williams Gas Supply Co. v. Apache Corp.*, 594 A.2d 34, 36-37 (Del. 1991) (citation omitted). This Court should defer to the Superior Court's findings and conclusions "whether or not reasonable people could differ on the conclusions to be drawn from the record[s] . . . ." *Martinez*, 86 A.3d at 1104 (citations omitted).

C. Merits of the Argument

1. The Superior Court Properly Exercised Its Discretion In Dismissing The Complaint.

At the outset of its Opinion, the Superior Court framed the factual background of the claims asserted in and parties to Mr. Hall's Complaint as follows:

> The parcel of land that was the basis for the contractual dispute was not in Delaware or the United States. The alleged injury did not occur in Delaware and the prior contract litigation did not take place in Delaware. The corporation that owned the parcel of land was not a Delaware corporation, the parties to the contract were not Delaware residents, potential witnesses are not Delaware residents, and the two individual Defendants are not Delaware residents. The third Defendants, Maritek, is the parent corporation of the corporation that owned the parcel.

(Op. at 2).

The Court continued:

> [T]he parcel of land (the "Bahamas Property") at the center of this dispute is in the Commonwealth of the Bahamas (the "Bahamas"). The parcel was owned by Maritek Bahamas, which was a Bahamian corporation; Plaintiff is a citizen of the United Kingdom; the disputed contract (the "Hall Contract") was countersigned by a resident of Taiwan, Republic of China; two of the Defendants are Canadian citizens; and the contract dispute was litigated for approximately ten years in the Supreme Court of the Commonwealth of the Bahamas, the Court of Appeals of the Commonwealth of the Bahamas, and the Judicial Committee of the Privy Council in London (the "Privy Council").

(*Id.* at 2-3) (footnotes omitted). The factual background, taken as a whole, clearly shows that the Superior Court properly considered and applied the factors for determining *forum non conveniens* under *General Foods Corp. v. Cryo-Maid*.

The *Cryo-Maid* factors are as follows:

> (1) the relative ease of access to proof;
>
> (2) the availability of compulsory process for witnesses;
>
> (3) the possibility of a view of the premises, if appropriate;
>
> (4) whether the controversy is dependent upon the application of Delaware law which Delaware courts more properly should decide than those of another jurisdiction;
>
> (5) the pendency or nonpendency of a similar action or actions in another jurisdiction; and
>
> (6) all other practical problems that would make the trial of the case easy, expeditious and inexpensive.

(198 A.2d at 478, 684).

Mr. Hall fails to demonstrate that the Superior Court abused its discretion by dismissing the Complaint on *forum non conveniens* grounds. The underlying facts are essentially undisputed. The sole Delaware entity is Maritek, a party to this action solely as the parent corporation of Maritek Bahamas. No other party to this action is a resident of the United States, let alone of Delaware. As the court below noted, "all of the events took place elsewhere and witnesses who could shed light on those events are outside of Delaware." (Op. at 18). Mr. Hall himself alleges in

his Opening Brief that he "has suffered a personal financial loss, and therefore the alleged injury *occurred in the United Kingdom*." (Appellant's Opening Br. at 27 (emphasis added)). Mr. Hall's mere disagreement with the Superior Court's *Cryo-Maid* analysis does not, however, support a viable claim that the court below abused its discretion. *See, e.g.*, *Martinez*, 86 A.3d at 1104 (noting that this Court must defer to the findings and conclusions of the trial court "whether or not reasonable people could differ on the conclusions to be drawn from the record[s]") (citations omitted).

This Court has tempered the burden of a party asserting a *forum non conveniens* claim, and has rejected the notion that *Cryo-Maid* is an impossible standard to satisfy. In *Martinez*, this Court explained that the perception that "'overwhelming hardship' suggests an insurmountable burden for defendants" is inaccurate. 86 A.3d at 1105. Instead, this Court held "the overwhelming hardship standard is not intended to be preclusive. Rather, it is intended as a stringent standard that holds defendants who seek to deprive a plaintiff of her chosen forum to an appropriately high burden." *Id.*

Lower courts have acknowledged *Martinez*'s more lax "overwhelming hardship" standard. *See, e.g.*, *Gramercy Emerging Mkts. Fund v. Allied Irish Banks, p.l.c.*, 2016 WL 7494898, at *8 (Del. Ch. Dec. 30, 2016), *aff'd on other grounds*, 2017 WL 4857141 (Del. Oct. 27, 2017); *VTB Bank v. Navitron Projects*

Corp., 2015 WL 9581538, at *3 (Del. Ch. Dec. 29, 2015) ("Though the 'overwhelming hardship' standard is an 'appropriately high burden,' it is 'not intended to be preclusive.'") (citation omitted). This Court recently endorsed this approach, affirming the Court of Chancery in *Gramercy Emerging Markets Fund*, and holding that the *Cryo-Maid* factors are not weighed in favor of a plaintiff where the Delaware litigation was not the first-filed litigation. *Gramercy*, 2017 WL 4857141, at *9 ("But when a case is later-filed and its predecessors are no longer pending, the analysis is not tilted in favor of the plaintiff or the defendant. In that situation, Delaware trial judges exercise their discretion and award dismissal when the *Cryo-Maid* factors weigh in favor of that outcome."); *see also Lisa, S.A. v. Mayorga*, 993 A.2d 1042 (Del. 2010) (affirming dismissal on *forum non conveniens* grounds, without the "overwhelming hardship" standard, where the prior action was dismissed on substantive grounds).

a. The Superior Court Did Not Abuse Its Discretion In Finding That The *Cryo-Maid* Factors Supported Dismissal.

Other than the fact that Maritek is a Delaware corporation, the action has no connection to Delaware. The Superior Court has fully considered and rejected each of Mr. Hall's present arguments, including those claims previously raised in the Bahamian Litigation, and determined that on balance the *Cryo-Maid* factors supported dismissal.

i. Litigation of Mr. Hall's claims would be more burdensome if litigated in Delaware rather than a different forum.

The first and second *Cryo-Maid* factors are (i) "relative ease of access to proof" and (ii) "availability of compulsory process for witnesses." 198 A.2d at 684. The Superior Court first observed that, based on Mr. Hall's characterization of the underlying action as an "extremely complicated [tort case] with a lot of facts," (Op. at 17 (quoting *Hall v. Fulton*, C.A. No. 08C-07-123 DCS, at 35 (Del. Super. Ct. Mar. 10, 2017) (TRANSCRIPT)), as well as the scope of potential discovery and the civil and criminal allegations asserted by Mr. Hall, the litigation would entail "significant expense," (*id.* at 17-18). The Superior Court further noted that testimonial evidence would likely be necessary and, given that witnesses to the related events reside outside of the United States, discovery could be more difficult and expensive. (*See id.* at 18).

Similarly, the Superior Court determined that compulsory service of process, the second *Cryo-Maid* factor, would be more difficult in Delaware than a different forum. The entities involved in the Hall Agreement were all non-Delaware (and non-United States) entities, including Maritek Bahamas, and their employees and representatives would likely be outside of Delaware's subpoena power. (Op. at 20 & n.64). Obtaining discovery from third-party witnesses would present similar difficulties. (*Id.* at 20). Viewing the increased difficulty and expense of

conducting discovery and litigation in Delaware, rather than a different forum, the Court properly evaluated the second *Cryo-Maid* factor.

Mr. Hall contends that compulsory service of process is easily obtained in Delaware, as Messrs. Fulton and Young "operated three of the [foreign] companies" identified by the Superior Court, and as they are subject to Delaware jurisdiction under 10 *Del. C.* § 3114 as directors of Maritek, they "can be compelled to appear in Delaware" to testify on behalf of the non-Delaware entities. (Appellant's Opening Br. at 40). However, Mr. Hall appears to misunderstand the scope of Delaware's jurisdiction under Section 3114. When an individual agrees to serve as a director of a Delaware corporation, he or she does not consent to Delaware's jurisdiction for any potential claim any plaintiff might bring, rather they have only consented to jurisdiction for claims relating to their role as a director. *See* 10 *Del. C.* § 3114(a) ("service of process may be made . . . ***in any action or proceeding against such director . . . for violation of a duty in such capacity*** . . . .") (emphasis added); *see also see also McKesson HBOC*, 2002 WL 88939, at *16 ("It appears then, that 10 *Del. C.* § 3114 only applies to lawsuits brought against a nonresident director of a Delaware corporation for acts performed as a director, which involve fiduciary duty violations. Section 3114 'does not confer personal jurisdiction over nonresident corporate directors simply

on the basis of their status as directors of Delaware corporations.'" (footnotes and citation omitted)).

The Superior Court noted that the parties all expressed a belief that an inspection of the land in the Bahamas central to the Hall Agreement would be unnecessary to resolve Mr. Hall's claims. (Op. at 21). The Superior Court therefore determined that the third *Cryo-Maid* factor, the possibility of viewing the premises, was neutral and did not favor either side. (*Id.*) Despite determining that this factor was neutral, the Superior Court recognized the possibility that a witness—particularly an expert witness—might need to inspect the land to determine the feasibility of Mr. Hall's plans and expectations for the land. (*Id.* at 21-22).

ii. Consideration of the applicability of Delaware law and the pendency or non-pendency of similar actions do not mandate Delaware as a forum.

The fourth *Cryo-Maid* factor, the applicability of Delaware law, does not weigh in Mr. Hall's favor. Mr. Hall's allegations of criminal or civil violations in the Bahamas support the Court's determination that Delaware was an improper forum. Among the many claims asserted in the Complaint, Mr. Hall alleges that the Defendants committed "fraud" by, *inter alia*, "[m]aking false representations to the Bahamian Government authorities to interfere with the business expectancy of [Mr. Hall]" and "[m]aking false representations in connection with the Bahamian

litigation . . . ." (Compl. ¶ 401). As the Superior Court correctly noted, Mr. Hall's allegations of civil or criminal misconduct in another jurisdiction (the Bahamas, Canada, the United Kingdom, or elsewhere) strongly suggest that foreign law might govern Mr. Hall's claims. (*See* Op. at 22-23; *see also* Appellant's Opening Br. at 29 ("Hall is a resident of the United Kingdom, but only one aspect of the fraudulent scheme occurred there, before the Privy Council. Fulton and Young reside in Canada but, at best, their misconduct was only initiated there.").

While the Superior Court ultimately considered the fifth *Cryo-Maid* factor, non-pendency of similar litigation, to favor Mr. Hall due to the resolution of prior related litigation, including the final appeal of the Bahamian litigation, (Op. at 23-24), the Superior Court made clear that "this current lawsuit should not be considered as an opportunity to relitigate the Canadian settlement involving non-Delaware transactions and non-Delaware residents or the Delaware stockholder settlement involving the internal affairs of a corporation and its stockholders," (*id.* at 25).

The Superior Court did not abuse its discretion when it determined that a dispute which implicated significant issues likely governed by non-Delaware law and involving issues previously litigated outside of Delaware would properly be decided by a forum other than Delaware.

iii. The litigation would be easier, more expeditious and less expensive in a non-Delaware forum.

The final, catch-all *Cryo-Maid* factor, "all other practical problems that would make the trial of the case easy, expeditious and inexpensive, (198 A.2d at 684), also supports the Superior Court's dismissal of the Complaint. Mr. Hall's latest allegations before the Superior Court are virtually identical to the allegations that Mr. Hall litigated through the Bahamian Litigation up to the Privy Court in London, which supported the Court's conclusion that those same issues—as alleged in the present action—should be heard in another jurisdiction. (Op. at 24-25).

The Superior Court also recognized that important questions of Bahamian or Canadian law could be better resolved by those jurisdictions than by a Delaware court. This Court has deferred to a foreign jurisdiction whether that jurisdiction has a stronger interest in the outcome of the dispute. *See Martinez*, 86 A.3d at 1110-11 n.37 (quoting *TA Instruments-Waters, LLC v. Univ. of Conn.*, 31 A.3d 1204, 1207 (Del. Ch. 2011)) ("The claims in this case implicate paramount interests of the State of Connecticut. Although Delaware has an interest in providing a forum for one of its citizens, Connecticut has the far greater interest in this dispute. Under the circumstances, it would not be appropriate for a Delaware court to preempt the ability of a Connecticut court to weigh in . . . .").

The cases cited by Mr. Hall do not support reversal of the Superior Court's dismissal of his claims. *First*, the cases that Mr. Hall cites are factually distinguishable, and therefore do not support reversal. *See, e.g.*, *Pipal Tech Ventures Private Ltd. v. MoEngage, Inc.*, 2015 WL 9257869, at *10 (Del. Ch. Dec. 17, 2015) (defendant holding assets subject of the claims in Delaware); *Chemtura Corp. v. Certain Underwriters at Lloyd's*, 2015 WL 5340475, at *4 (Del. Super. Ct. Aug. 26, 2015) (Delaware action was first-filed, therefore subject to "overwhelming hardship" standard). *Second*, the *Cryo-Maid* analysis is "not quantitative," *In re Asbestos Litigation*, 929 A.2d 373, 381 (Del. Super. Ct. 2006), nor is the application of the factors "mechanical or mathematical," *Pipal Tech*, 2015 WL 9257869, at *5. *Third*, this Court must defer to the Superior Court's reasonable exercise of discretion, "whether or not reasonable people" might reach a different conclusion from the same record. *Martinez*, 86 A.3d at 1104 (citations omitted). While other courts may have reached a different conclusion based on a similar record, absent a showing that the Superior Court's dismissal of the Complaint was not supported by the record or not the product of an orderly and logical reasoning process, this Court must affirm. *See Williams Gas Supply*, 594 A.2d at 36-37.

Moreover, Delaware is not presumptively the proper forum for all claims involving a Delaware corporation, particularly where, as here, the only connection

between the corporation and the State is the registered agent or when a "state of incorporation has no rational connection to the cause of action." *Martinez*, 86 A.3d at 1109; *see also Hazout v. Tsang Mun Ting*, 134 A.3d 274, 279 (Del. 2016) ("[T]he ability of a defendant to move for dismissal on *forum non conveniens* grounds provides an additional tool to ensure that officers and directors are not subjected to suit in Delaware in a way that is unduly burdensome. Our precedent makes clear that even Delaware corporations can avoid facing suit in Delaware, where the connection between the claims at issue and Delaware are attenuated and the defendant corporation faces an undue burden."). Delaware courts have also been more willing to defer to a foreign jurisdiction where the party bringing the action was not "a plaintiff who resides in the forum." *See Martinez*, 86 A.3d at 1108 (*quoting Ison v. E.I. du Pont de Nemours & Co., Inc.*, 729 A.2d 832, 835 (Del. 1999)).

Similarly without merit are Mr. Hall's allegations that Defendants violated Delaware law by failing to comply with a Court of Chancery order and which thereby led to the alleged misconduct in the Bahamas. The applicable Court of Chancery order—which was a stipulation negotiated by Mr. Hall's counsel and defendants' counsel—makes clear that defendants in the Court of Chancery action were only required to produce "documents that had been produced by defendants to plaintiffs in [the Court of Chancery] action." (A163 ¶ 1). Defendants produced

all such documents. To the extent that Mr. Hall believes that the Court of Chancery order has been violated, neither the underlying Superior Court action nor this appeal is the proper venue to bring such a claim. (*See* Op. at 23 n.73 ("[T]o the extent that Plaintiff alleges that Defendants failed to disclose additional documents to the Delaware Chancery Court, it would appear to be a Chancery Court matter."); *id.* at 31 n.109 ("To the extent that Plaintiff is dissatisfied with the production of documents in [the Court of Chancery action], Plaintiff could pursue this matter in the Chancery Court.")).

Moreover, Mr. Hall submitted these disputed documents to the Privy Council in support of his appeal. The Privy Council did not find the documents persuasive, however, and the Privy Council refused to reopen the judgment. (Op. at 9-10; Appellant's App. A-001589-1604, ¶¶ 28-39). Mr. Hall attempts to rely on these documents in an effort to relitigate claims previously argued and rejected in the Bahamian Litigation. (*See Infra* II).

b. Mr. Hall's Skepticism Regarding the Bahamian Court Does Not Alter the *Cryo-Maid* Analysis.

Mr. Hall's assertion that he could not obtain equitable relief from the Bahamian court is equally without merit. *First*, Mr. Hall litigated the core dispute for a decade through two levels of Bahamian courts and the Privy Council in London. Mr. Hall either failed to allege corruption before those courts or they

were unswayed by his claim. The Superior Court similarly rejected this argument, and Mr. Hall should not be permitted to reargue his core dispute before this Court. *Second*, Mr. Hall misunderstands the consideration of the Superior Court in approving *forum non conveniens* grounds. The Court did not mandate that Mr. Hall relitigate his claim—to the extent they are not otherwise barred—in the Bahamas, rather the Court merely held that *Delaware* is not an appropriate forum. (*See* Op. at 28-29 ("The Bahamas (or another forum) has a greater interest in this ongoing dispute concerning the fair and orderly development of land within the borders of the Bahamas, despite Plaintiff's concerns for 'possible [Delaware corporation] policy reasons.'" (footnotes omitted)). Mr. Hall is free to initiate litigation in any other forum that will hear his claims.

Importantly, the *Cryo-Maid* factors simply consider the connection of claims to Delaware and the appropriateness of a claim being brought in Delaware. *See Cryo-Maid*, 198 A.2d at 684. The superiority or inferiority of a particular alternative forum is not a factor that the courts consider. *See Smith v. Freescale Semiconductor, Inc.*, 2010 WL 5140751, at *1 (Del. Super. Ct. Dec. 13, 2010) ("In conducting the [*Cryo-Maid*] analysis, the Court is not permitted to compare the plaintiff's chosen forum with the proposed alternative forum and decide which forum is more appropriate. Instead, when deciding a motion to dismiss on *forum non conveniens*, the Court must base its determination solely upon whether any or

all of the *Cryo-Maid* factors establish that the defendant will suffer overwhelming hardship and inconvenience if required to litigate in Delaware.") (footnotes omitted). Mr. Hall's contention that the Superior Court abused its discretion in failing to give this point adequate consideration is meritless.

II. Even If The Superior Court Improperly Dismissed the Complaint on *Forum Non Conveniens* Grounds, This Court Can Bar Mr. Hall's Claims Under *Res Judicata* and/or Collateral Estoppel and Improper Claim Splitting.

A. Question Presented

If this Court finds that the Superior Court improperly dismissed the Complaint on *forum non conveniens* grounds, can this Court nevertheless bar Mr. Hall's claims under *res judicata* and/or collateral estoppel and improper claim splitting, despite the Superior Court having never decided such claims? This argument was preserved in the trial court at Appellant's App. A-001211-13, A-001485-93.

B. Scope of Review

This Court "may affirm on the basis of a different rationale than that which was articulated by the trial court" and "may rule on an issue fairly presented to the trial court, even if it was not addressed by the trial court." *Unitrin, Inc. v. Am. Gen. Corp.*, 651 A.2d 1361, 1390 (Del. 1995) (citing *Standard Distrib. Co. v. Nally*, 630 A.2d 640, 647 (Del. 1993)); *see also Riverbend Cmty., LLC v. Green Stone Eng'g, LLC*, 55 A.3d 330, 333 n.7 (Del. 2012) (considering separate basis for summary judgment not relied on by the trial court where that basis "was fairly presented to the trial judge").

C. Merits of the Argument

The doctrines of collateral estoppel and the prohibition against claim splitting preclude the relitigating of issues that have already been decided in another jurisdiction. When evaluating the preclusive effect of a judgment rendered in another jurisdiction, Delaware courts apply that jurisdiction's substantive *res judicata* law. *Columbia Cas. Co. v. Playtex FP, Inc*., 584 A.2d 1214, 1217 (Del. 1991). Bahamian law is based on English common law.

1. The Claims Asserted in The Action Are Barred By Issue Estoppel From the Bahamas Litigation.

Under English law, issue estoppel "may arise where a particular issue forming a necessary ingredient in a cause of action has been litigated and decided and in subsequent proceedings between the same parties involving a different cause of action to which the same issue is relevant one of the parties seeks to re-open that issue." *Arnold v. Nat'l Westminster Bank plc*, [1991] 2 AC 93 (HL) 105. (Appellant's App. A-001320-36). "Issue estoppel is an extension of cause of action estoppel, and applies where the same parties or their privies are engaged in successive claims based on different causes of action, but where an essential issue in the first claim is also an essential issue in the second claim." Stuart Sime, *Res Judicata and ADR*, 34 CIV. JUST. Q 35, 38 (2015) (citing *Thoday v. Thoday* [1964] P 181, per Diplock LJ at p 197). (Appellant's App. A-001339-54).

The "Hall Agreement" has been determined to be invalid. That issue should dispose of all the issues asserted in this case.

2. Mr. Hall's Improper Claim Splitting Is Barred by English Law.

As part of its *res judicata* jurisprudence, English law also recognizes the prohibition against claim splitting, referred to as abuse of process.

> In trying this question I believe I state the rule of the Court correctly when I say that, where a given matter becomes the subject of litigation in, and of adjudication by, a Court of competent jurisdiction, the Court requires the parties to that litigation to bring forward their whole case, and will not (except under special circumstances) permit the same parties to open the same subject of litigation in respect of matter which might have been brought forward as part of the subject in contest, but which was not brought forward, only because they have, from negligence, inadvertence, or even accident, omitted part of their case. The plea of *res judicata* applies, except in special cases, not only to points upon which the Court was actually required by the parties to form an opinion and pronounce a judgment, but to every point which properly belonged to the subject of litigation, and which the parties, exercising reasonable diligence, might have brought forward at the time.

Henderson v. Henderson, (1843) 3 Hare 100, 114-15 (Appellant's App. A-001356-64); *see also Greenhalgh v. Mallard*, [1947] 2 All ER 255 (AC) 257 ("[*R*]*es judicata* for this purpose is not confined to the issues which the court is actually asked to decide, but . . . it covers issues or facts which are so clearly part of the subject-matter of the litigation and so clearly could have been raised that it would be an abuse of the process of the court to allow a new proceeding to be started in

respect of them.") (Appellant's App. A-001367-72); *Yat Tung Inv. Co. Ltd. v. Dao Heng Bank Ltd.*, [1975] AC 581 (PC) 582 ("[I]t would be an abuse of process of the court to raise in subsequent proceedings matters which could and should have been litigated in the earlier proceedings.") (Appellant's App. A-001374-84).

Mr. Hall could have and should have brought these claims in the Bahamas Litigation. Accordingly, he should not be permitted to bring them here.

3. Mr. Hall's Responses Are Unpersuasive.[2]

Mr. Hall has tried to avoid the preclusive effect of the judgment in the Bahamas Litigation on a variety of grounds, none of which has merit.

First, Mr. Hall argues that Defendants chose not to appear in the Bahamas Litigation. (Opp. at 2). That is not the issue, however. The issue is whether Mr. Hall should have asserted claims against them. *See Henderson*, 3 Hare at 115 ("the Court requires the parties to that litigation to bring forward their whole case"). He made no attempt to do so.

Second, Mr. Hall argues that "the Bahamian judgment is not enforceable in Delaware, because Hall never had the opportunity for a full and fair trial in a court of competent jurisdiction, under a judicial system which does not violate American

[2] As the Superior Court did not reach Defendants' arguments on *res judicata* and/or collateral estoppel and improper claim splitting, (Op. at 11 n.26), Defendants repeat Mr. Hall's responses contained in his Opposition.

public policy." (Opp. at 2). Mr. Hall makes no attempt to explain why the Bahamian courts and the English Privy Council are judicial systems which violate American public policy. Any such argument would be meritless.

The only example Mr. Hall gives as to why he did not get a fair trial in the Bahamas is based on the argument that he received certain documents only after the trial in the Bahamas. Defendants concede that pursuant to an order of the Court of Chancery, Mr. Hall received certain documents to which he did not have access during the trial in the Bahamas Litigation. (*See* Appellant's App. A-001670-74). But Mr. Hall raised that argument in the Privy Council and it was rejected. (Appellant's App. A-001589-1604, ¶¶ 28-39). As the Superior Court noted, the litigation before that court "should not be considered as an opportunity to relitigate" claims previously decided by other courts, (Op. at 25), and the Mr. Hall should not be allowed to further relitigate those issue before this Court.

Mr. Hall argues in his Opposition that he only learned after the hearing in the Privy Council that there might be additional documents. (Opp. at 3). That argument is inconsistent with the allegations of the Complaint, however. In paragraph 284 of the Complaint, Mr. Hall alleges that Mr. Fulton submitted a sworn statement to the Privy Council in connection with the appeal. (Comp. ¶ 284). In paragraph 287 of the Complaint, Mr. Hall alleges: "Fulton attached to his sworn statement emails which had not been disclosed under the Delaware Court of

Chancery Order." (Comp. ¶ 287). Accordingly, Mr. Hall himself admits that at the time he was prosecuting his appeal before the Privy Council, he was aware that documents existed to which he had not previously had access. Nonetheless, the Privy Council refused to reopen the judgment. (Appellant's App. A-001589-1604, ¶¶ 28-39). This Court should not allow Mr. Hall to relitigate that decision.

Third, at the hearing on Defendants' motion to dismiss, Mr. Hall's counsel argued that whether or not the Hall Agreement was valid was irrelevant to Mr. Hall's tortious interference with business expectancy claim. Mr. Hall's counsel further argued that the tortious interference claim was based on actions Mr. Hall took in reliance on the existence of the Hall Agreement. Mr. Hall contends—incorrectly—that these allegations differentiate this case from the Bahamas Litigation.

Mr. Hall's position is best set forth in Plaintiff's Motion for a Case Management Conference, and to Defer All Case And Issue Dispositive Motions Until Discovery is Complete and the Case is Ripe for Summary Judgment. (Trans. ID 60221913). In that motion, Mr. Hall argued:

> Over the next three years, MBL and Hall treated the Hall Agreement as a binding contract. SAC 224. Hall spent about $250,000 on development plans. SAC 176. ***Hall contracted with Matrix Securities*** to provide financing, and created a joint venture called "Sea Crystal Ltd." SAC 340, Ex. 67 (Ex. B hereto). ***Hall also entered into an agreement with Eastman Chemical Company***, a Delaware corporation, to establish a biotechnology plant on the land. SAC 291,

340-5. In October 2003, ***Hall arranged a joint site visit with Matrix Securities and the Bahamian Ministry of Financial Services & Investments***. SAC 291 and Ex. 67 (Ex. B. hereto). On October 7, 2003, the Ministry wrote to Matrix Securities and Hall extending "thanks and appreciation for the exemplary hard work and patience of Peter Hall in arranging the captioned Site Visit to Long Island on Friday, 3rd October, 2003. His efforts have been in all respects more diligent than most investors in pursuing the application for the Permit to buy the proposed properties." *Id*. at Ex. 67 (Ex. B hereto).

On November 11, 2004, ***Hall entered into an agreement with Mr. Lawrence Cartwright, the Member of Parliament for Long Island, to create a charitable trust and develop the land to benefit the citizens of Long Island***. SAC 47, Ex. 94 (Ex. C hereto). The trust's goals included establishing a branch of the College of the Bahamas on Long Island, refurbishing the local high school, libraries, parks, and playgrounds, and building a mini hospital. SAC 340-5; Ex. 94 (Ex. C hereto). Mr. Cartwright supported Hall's plan, which provided that up to two-thirds of the land be deeded to the people of Long Island with the remainder developed to create long term jobs. SAC 340-5; Ex. 94 (Exhibit C hereto). In March 2005, Mr. Cartwright told Hall that the Ministry had promised him that the project would be approved around March 22, 2005. SAC 312.

In 2004 and 2005, defendants Fulton and Young falsely told Bahamian officials that Hall did not have the backing of Matrix Securities, and filed with the SEC that there was "substantial doubt" about his ability to perform. SAC 292-302. It was not until two years later, on February 9, 2007, that Fulton wrote for the first time to Matrix Securities to check these allegations. SAC 308-9; Ex. 143 (Ex. D hereto). On February 20, 2007, Matrix responded saying that it had a contract with Hall. SAC Ex. 144 (Ex. E hereto).

(*Id.* at 2-3) (emphasis added).

All these issues were raised in the Bahamas Litigation, however. As the Bahamian court detailed in its opinion:

130. ***Hall, according to his witness statement, continued to act based upon his belief that there was a binding contract with Plaintiff. He secured financing for his project and completed the development proposal which he intended to submit to the Investment Board, he said***. Further to this, in an e-mail to Mrs Harding Lee, he indicated that he would be coming to The Bahamas to tie down the "loose ends" with regard to his purchase of the subject property, sometime during the month of April 2003.

131. Hall stated that in July, 2003 a meeting was held at the chambers of Maritek's attorney Donna Harding Lee. That meeting was attended by Hall, Eddy Chiang, and Sam Shen, on behalf of Maritek, and Mrs Harding Lee. The meeting was a stormy one, with Mr Shen insisting that the absence of a completion date was not acceptable to Maritek and thus there was no contract. It was at this point, according to Hall, that he left the meeting to speak to his associate but not before advising everyone present that there had been a binding contract in place since October, 2002.

132. Hall explained that the various changes of stance which he took concerning the existence of a contract with the Plaintiffs was based on his belief that he was being used as a "back up purchaser" while ***the principals of Maritek sought to avail themselves of a better deal***. He had acted pursuant to the advice of his London solicitor and was merely seeking to "call the vendor's bluff", he said.

133. According to Hall, acting on his belief that there was a binding contract between himself and the Plaintiff, and based on Maritek's communications with him, ***he continued formulating his development proposal, a joint venture with Matrix Securities (Matrix)*** for submission to the MFSI. However, he testified that once the company changed hands, ***the new directors proceeded to use every means to frustrate his performance of the existing contract***: they interfered with his attempts to obtain official approval of his project, submitted their own development proposals and circulated false information about his financial capability to complete the purchase and fund the proposed development.

134. Hall, as evidence of his continuing efforts to complete the purchase of the property, his proposed development plans, and to

> expedite official approval referenced a site tour, which he had arranged, along with the Minister and other officials of the MFSI and Matrix executives. ***In the latter half of 2004 Hall also executed a Trust Deed with Mr Larry Cartwright, the Member of Parliament, to fund public projects for that constituency and had also secured the support of the local government councillors***.
>
> 135. Hall stated that the new owners' efforts to frustrate his contract with Maritek also included ***visits to Long Island by David Young***, who circulated his proposed competing development plans, and Mr Jimmy Knowles' letter to the Central Bank of The Bahamas, in which he foreshadowed the new owners' development plans for the property.
>
> 136. ***Hall also gave evidence of telephone conversations that he had with Messrs Fulton and Young in 2004***, concerning his contract to purchase the property, in which they intimated that it was doubtful that he had the financial backing to complete the purchase. In repudiation of that suggestion, ***Hall gave them evidence of his arrangements with Matrix Securities (Matrix), and Eastman Chemicals (Eastman)*** whereby, through joint venture agreements, appropriate financing for his purchase and development of the property would be secured. No documentary evidence of those arrangements was produced by Hall during the trial. However, he referred to various documents and letters written by him, which implied that those entities had agreed to finance his development.
>
> 137. Finally it was Hall's evidence that the actions of the new owners of Maritek were all orchestrated to hinder his performance of the alleged contract and prevent his securing government approval of his plans to purchase and develop of the property. This was done despite the strong support of the Member of Parliament for the area and Local Government Councillors, he said.

(A157 ¶¶ 130-37) (emphasis added).

The alleged facts which form the basis of Mr. Hall's claims alleged in the Superior Court action were all considered in the Bahamas Litigation. This Court

should not permit Mr. Hall to relitigate claims already considered in the Bahamas Litigation and dismissed by the Superior Court.

Finally, Mr. Hall argues that preclusion is an affirmative defense that should not be considered on a motion to dismiss. (Opp. at 1-2). But the Delaware courts, including this Court, and federal courts have dismissed many cases on the grounds of preclusion. *See, e.g.*, *Laborers' Dist. Council Constr. Indus. Pension Fund v. Bensoussan*, 2016 WL 3407708, at *16 (Del. Ch. June 14, 2016) ("Accordingly, and as an alternative to dismissing the Complaint under the doctrine of issue preclusion, the Complaint is dismissed under the doctrine of claim preclusion."), *aff'd*, 155 A.3d 1283 (Del. 2017) (TABLE); *Adjile, Inc. v. City of Wilm.*, 2010 WL 1379921, at *2 (Del. Super. Ct. Mar. 31, 2010) ("The elements of res judicata and collateral estoppel have been met as to these issues, and thus, the Appellee's Motion to Dismiss as to these claims will be granted."), *aff'd*, 30 A.3d 782 (Del. 2010) (TABLE); *Gamco Asset Mgmt. Inc. v. iHeartMedia Inc.*, 2016 WL 6892802, at *14 (Del. Ch. Nov. 29, 2016) (granting defendants' motion to dismiss because plaintiff's "claims regarding the Revolving Note and Intercompany Agreements (Counts I & II) are barred by *res judicata*"), *aff'd*, 2017 WL 4607413 (Del. 2017) (TABLE); *Williams v. Murdoch*, 330 F.2d 745, 749 (3d Cir. 1964) ("It is a fact that Rule 8(c) speaks of res judicata as an affirmative defense which must be asserted under Rule 8(c). But this court in *Hartmann v. Time, Inc.*, 166 F.2d 127, 131, 1

A.L.R.2d 370 (1948), held that the defense of res judicata might be raised by [motion] to dismiss or by an answer.").

Mr. Hall's claims in this action are barred by the judgment in the Bahamas Litigation. Accordingly, this appeal should be denied.

CONCLUSION

For the reasons set forth, Defendants-Appellees respectfully request that this Court affirm the Opinion of the Superior Court.

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