



IN THE SUPREME COURT OF THE STATE OF DELAWARE

SPCP GROUP, LLC,)	
)	
Plaintiff Below,)	
Appellant,)	C.A. No. 388, 2025
)	
v.)	Court Below:
)	
SVALBARD HOLDINGS LIMITED)	Court of Chancery of the State of
and ATTESTOR VALUE MASTER)	Delaware
FUND LP,)	
)	C.A. No. 2024-0576-MTZ
Defendants Below,)	
Appellees.)	

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January 8, 2026

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NATURE OF PROCEEDINGS

This appeal arises from appellant SPCP Group, LLC's ("Silver Point" or "Appellant") effort to corral nonresident appellees Svalbard Holdings Limited ("Buyer" or "Svalbard") and Attestor Value Master Fund LP ("AVMF," and with Buyer, "Appellees") into the courts of this State based on a flimsy reed: Buyer's status as one creditor, out of at least hundreds of thousands of creditors, in a single federal bankruptcy case. As the Court of Chancery correctly held, such an inappreciable link to Delaware fails to establish personal jurisdiction over Appellees.

The gravamen of Appellant's causes of action concerns its failed trade with nonparty Floating Point Group International LLC ("FPG"). Appellant alleges that FPG, a Cayman entity, was obligated under a preliminary trade confirmation to sell to Appellant a customer claim against a corporate debtor in a Chapter 11 bankruptcy (the "Claim"); and that FPG breached the contract by later selling the Claim to Buyer, also a Cayman entity, who purportedly "induced" that alleged breach. Despite learning of the alleged breach in July 2023, Appellant sat on its hands and waited for the claim to, in its own words, "skyrocket" in value – before making the calculated bid to commence the underlying action a year later in an improper forum, the Court of Chancery.

The three original defendants – FPG, its U.S. affiliate, and Svalbard – moved to dismiss Appellant's original complaint and to compel arbitration against FPG.

Among other deficiencies, Appellant sued FPG in the Court of Chancery despite a mandatory arbitration clause in the trade confirmation; and attempted to haul FPG and Svalbard into Delaware, despite their lack of meaningful contacts with this State.

Faced with that motion, Appellant pivoted and filed the Amended Complaint, dropping all claims against the FPG entities; rehashing its allegations against Svalbard; and tacking on claims against AVMF – who, by Appellant’s own pleadings, played no role in any transaction giving rise to the claims. Appellees moved to dismiss for lack of personal jurisdiction and failure to state a claim.

On August 15, 2025, the Court of Chancery dismissed the Amended Complaint in its entirety. In a thoughtful and thorough letter opinion (the “Decision”), the Court of Chancery held that exercising personal jurisdiction over Appellees based on their filing of a notice of transfer of claim (the “Transfer Notice”) was inappropriate under 10 *Del. C.* § 3104(c)(1) (“Section 3104(c)(1)”) – Silver Point’s sole hook for long-arm jurisdiction – because it “lacks the requisite nexus to Plaintiff’s claims.” Decision at 12. The alleged “wrongful act,” Appellees’ alleged interference with contract and unjust enrichment, occurred in July 2023, whereas the Transfer Notice was filed four months later in November 2023. *Id.* at 14. Further, the Transfer Notice did not “effectuate” the “wrongful act of interfering with [contract],” because as Silver Point conceded, “the [Transfer Notice] did not alter any party’s contractual rights to the [C]laim.” *Id.* The Court of Chancery also

rejected Silver Point’s “more tangential arguments” for jurisdiction, including that Buyer’s purchase of the Claim was a Delaware act. *Id.* at 19-22.

Appellant appeals the Decision based on three principal grounds. None has merit.

First, the Court of Chancery correctly held that the filing of the Transfer Notice does not meet Section 3104(c)(1). The filing lacked the requisite “nexus” to Appellant’s claims. That filing could not have possibly given rise to or been integral to Appellant’s claims, which accrued in July 2023. Nor did that ministerial filing amount to a “transaction of business” in Delaware within the meaning of Section 3104(c)(1).

Second, the Court of Chancery correctly held that Buyer’s purchase of the Claim does not meet Section 3104(c)(1). The Claim is not “located” in Delaware. It is instead an intangible legal right with no fixed location based on assets in one or more FTX customer accounts that existed prebankruptcy. Moreover, even if the Claim were a Delaware asset, its purchase alone fails to confer jurisdiction because that transaction was devoid of any Delaware ties. Instead, a non-Delaware buyer with a non-Delaware member negotiated a contract entirely outside of Delaware with a non-Delaware seller; that contract had a non-Delaware choice of law clause and a non-Delaware forum selection clause.

Finally, exercising jurisdiction over Appellees offends due process. Appellees' alleged "contacts" with Delaware boil down to Svalbard's role as a single creditor – out of thousands, by some estimates over a million¹ – in a single Delaware bankruptcy proceeding. That does not come close to meeting the minimum contacts required by the Constitution. Indeed, under Appellant's theory, each and every creditor who has ever filed a notice or transfer of claim in the Delaware bankruptcy court – a number easily in the tens of millions at any given point in time – would, as a result of that one housekeeping act, be subject to suit in a state court of Delaware by a third-party seeking to challenge said creditor's ownership of its bankruptcy claim. This is the preposterous, yet inevitable, outcome of Appellant's theory. It would open the floodgates of Delaware state courts to tens of millions of creditors who would not otherwise be subject to jurisdiction in this State. And it would spurn "traditional notions of fair play and substantial justice."

For these reasons, and the additional ones set forth below, the Decision should be affirmed.

¹ Akriti Sharma & Daniel Leussink, *FTX creditors may number over 1 million as regulators seek answers*, REUTERS (Nov. 15, 2022), available at <https://www.reuters.com/technology/ftx-officials-contact-with-us-regulators-filing-2022-11-15/>.

SUMMARY OF ARGUMENT

In its “Summary of Argument,” Appellant asserts the Court of Chancery’s Decision should be reversed on three principal grounds. OB at 4-6.² Appellees deny all three:

1. Denied. The Court of Chancery correctly held that the filing of the Transfer Notice does not meet Section 3104(c)(1). First, that filing lacked the requisite nexus to Appellant’s causes of action. The filing occurred four months after the underlying transaction, the sale of the Claim to Buyer; thus, the filing did not and could not possibly have “given rise to” Appellant’s causes of action. Nor was the filing “integral” to the claims. Instead, and as both bankruptcy law and the plain language of the controlling contract confirm, it was a clerical act that had no effect on anyone’s substantive rights to the Claim, including Buyer’s title to and ability to recover on the Claim. Those rights vested in their entirety as soon as Buyer purchased the Claim. Second, the electronic filing of a single ministerial Transfer Notice does not constitute a “transaction of business” that actually occurred in Delaware. There is no law supporting that proposition, and Appellant cites none.

2. Denied. The Court of Chancery correctly held that Buyer’s purchase of the Claim does not meet Section 3104(c)(1). The Claim is not “located” in

² Citations to “OB” refer to Appellant’s opening brief. Citations to “A” refer to the appendix.

Delaware. It is instead an intangible entitlement based on assets that existed in FTX customer account(s) prebankruptcy. The Claim has no fixed location. And in any event, Appellant does not offer any basis to conclude that the Claim or its underlying assets and customer account(s) are based in Delaware. Further, even if the Claim were “located” in Delaware, that would still not establish jurisdiction. The purchase of a Delaware-based asset does not satisfy Section 3104(c)(1) where, as here, a Cayman defendant (Buyer) with a British parent (AVMF) negotiated a contract with a Cayman seller (FPG) exclusively outside of Delaware; that contract had no Delaware choice of law clause; and neither party to the sale stepped foot in Delaware or directed any communications or conduct towards Delaware in the course of conducting that transaction.

3. Denied. The exercise of personal jurisdiction over Appellees offends due process. Buyer’s mere status as one creditor (out of at least hundreds of thousands) in a single federal bankruptcy case in Delaware does not clear the due process threshold. Moreover, if Appellant were correct, then tens of millions of creditors who file a claim or transfer notice against a debtor in a Delaware bankruptcy case could be hauled into a Delaware state court by virtue of that single administrative filing. That is precisely an outcome that the jurisdictional requirements of the Constitution were designed to prevent.

COUNTERSTATEMENT OF FACTS

A. Factual Background

On November 11, 2022 (the “Petition Date”), cryptocurrency exchange operator FTX Trading, Ltd. and its affiliated debtor entities (collectively, “FTX”) filed a voluntary petition for Chapter 11 bankruptcy in the United States Bankruptcy Court for the District of Delaware (the “Bankruptcy Court”). *See* Chapter 11 Petition, *In re FTX Trading Ltd.*, Case No. 22-11068 (JTD) (Bankr. D. Del. Nov. 11, 2022), D.I. 1. After FTX filed for bankruptcy, a secondary market for FTX customer claims – *i.e.*, claims held by former FTX customers who maintained accounts holding digital assets on FTX.com as of the Petition Date – arose, whereby investors sought to purchase from FTX customers their claims against FTX. A28-29.

On or around July 12, 2023, Silver Point and FPG entered into a preliminary trade confirmation (the “TC”) to sell to Silver Point an FTX customer claim (defined above as the “Claim”) with a face value of approximately \$10.5 million for \$1,363,238.96. A17-18, A83. Under the TC, the sale was based on multiple preconditions, including the parties’ execution of a further assignment of sale agreement and Silver Point’s “satisfactory review and diligence” of documents and KYC information related to the Claim. A18-19, A84.

The TC further provided that the agreement shall automatically be “null and void if Consideration is not paid to [FPG] by July 19, 2023, provided that [FPG]

provides all Subject Documents and KYC information requested by [Silver Point] no later [than] July 12, 2023.” A84. Nothing in the TC prohibited FPG from marketing, offering, or ultimately selling the Claim to an alternate buyer once the TC became “null and void.” A83-84.

Silver Point did not pay FPG the sale consideration by the July 19, 2023 deadline. Thereafter, on or about July 27, 2023, FPG and Svalbard entered into the Assignment of Claim Agreement (the “ACA”) in which FPG agreed to sell the Claim to Svalbard for \$1,316,648.72. A106. At no point during the drafting, negotiation, or execution of the ACA did representatives of Svalbard (a Cayman entity with representatives based in the United Kingdom) or FPG (a Cayman entity with its principal place of business in New Jersey) set foot in or otherwise have any contact with Delaware. *See, e.g.*, A80 ¶ 10; A87. The ACA contained a New York choice of law clause and an exclusive New York forum selection clause. A101 (ACA § 35).

The ACA gave Buyer full legal rights and title to the Claim. A88-89 (ACA § 3). No further action was required from Buyer or anyone else, in the Bankruptcy Court or otherwise, to “perfect” Buyer’s substantive rights and take title to the Claim.

Section 15 of the ACA grants Buyer the right, but not obligation, to file “one or more notices of transfer of claim [on the FTX Bankruptcy docket] . . . for the

Transferred Claims at any time after the Transfer.” A96 (ACA § 15). The clause further specifies that even if Buyer never files such notice of transfer, it still retains its legal and economic rights to the Claim by virtue of a 100% participation interest in the Transferred Rights (as defined in the ACA), which include any distributions made to FPG on account of the Claim:

Until such time that the Bankruptcy Court substitutes Buyer for Seller, this agreement shall be deemed to grant Buyer *an undivided 100% participation interest in the Transferred Rights* and the other rights set forth herein. For the avoidance of doubt, if it is deemed that the transactions hereunder are a grant of a participation interest, Seller agrees to cooperate and *take all such action to pursue and defend the Claim and other Transferred Rights, at the direction of and on behalf of Buyer.*”

Id. (emphases added).

On November 23, 2023 – four months after the ACA was signed and Buyer acquired title to the Claim – AVMF, on behalf of Buyer, filed the Transfer Notice on the FTX Bankruptcy docket providing notice to the FTX debtors and other parties-in-interest in those Chapter 11 cases that Buyer had acquired title to the Claim from FPG. A112-114.

B. Procedural History

Silver Point commenced the action below on May 30, 2024, asserting claims against Svalbard, FPG, and an affiliate of FPG. The original defendants moved to dismiss and to compel arbitration based on the mandatory arbitration clause in the TC and other grounds. A7-8, A47.

On September 6, 2024, Silver Point voluntarily dismissed the FPG defendants and amended its complaint (the “Amended Complaint”). A7, A10. The Amended Complaint removed the FPG Defendants as parties and added AVMF as a defendant. A11. The Amended Complaint asserted three causes of action: (1) equitable conversion against both Appellees, (2) tortious interference with contract against Buyer only, and (3) unjust enrichment against both Appellees. A32-37.

On October 16, 2024, Appellees moved to dismiss the Amended Complaint under Court of Chancery Rule 12(b)(2) for lack of personal jurisdiction and Rule 12(b)(6) for failure to state a claim. A40-75. In support of their motion, Appellees submitted among other documents the TC, ACA, and an affidavit from the founder and former CEO of FPG. Appellant did not submit any evidence rebutting, nor did it otherwise dispute, the sworn statements of the former CEO. The Court of Chancery held oral argument on March 27, 2025 and subsequently ordered supplemental briefing on the import of notices of transfer of claim in bankruptcy proceedings. A226, A300-301.

On August 15, 2025, the Court of Chancery granted Appellees’ motion to dismiss the Amended Complaint for lack of personal jurisdiction. In the meticulous 23-page Decision, the Court of Chancery held that exercising personal jurisdiction over Appellees based on the filing of the Transfer Notice was improper under Section 3104(c)(1). The court reasoned that assuming, without deciding, that filing

the Transfer Notice constituted a transaction of business in Delaware, it nonetheless “lacks the requisite nexus to [Appellant]’s claims.” Decision at 12. For one, the central wrongdoing alleged, interference with the TC and unjust enrichment, occurred in July 2023 when the ACA was signed: “[t]hat is when [Appellant] was injured and its claim accrued.” *Id.* at 14. The Transfer Notice, however, was filed four months later in November 2023. Thus, the Transfer Notice did not “effectuate” the “wrongful act of interfering with the [TC],” because as Silver Point conceded, the notice “did not alter any party’s contractual rights to the [C]laim.” *Id.*

The Court of Chancery also rejected Silver Point’s alternative arguments, including that (i) the Claim was a Delaware asset, (ii) the involvement of the Bankruptcy Court was required in order for Appellees to receive payment on account of the Claim, and (ii) Appellees “transacted business” in Delaware by virtue of their alleged participation in an ad hoc committee of international FTX creditors (the “Ad Hoc Committee”), (iii) Appellees’ purchase of other FTX customer claims, somehow supplied a Delaware nexus, and (iv) Appellees conspired with an unnamed Eversheds attorney, who represented FPG, in devising and carrying out the sale of the Claim from FPG to Buyer. A19-22. Having dismissed on jurisdictional grounds, the Court of Chancery did not reach Appellees’ arguments for dismissal based on failure to state a claim.

On September 15, 2025, Silver Point filed a notice of appeal. A1.

ARGUMENT

I. THE COURT OF CHANCERY CORRECTLY DISMISSED THE ACTION FOR LACK OF PERSONAL JURISDICTION.

A. Questions Presented.

Did the Court of Chancery correctly hold that Appellant failed to establish personal jurisdiction over Appellees, where (i) the Transfer Notice was filed four months after Appellant's causes of action accrued and had no effect on any party's substantive rights with respect to the Claim; (ii) the Claim, an intangible legal right not located in Delaware, was purchased by a non-Delaware buyer from a non-Delaware seller in a transaction negotiated entirely outside of Delaware and pursuant to a contract with non-Delaware choice of law and non-Delaware forum selection clauses; and (iii) due process precludes exercising jurisdiction over Appellees based on Buyer's status as a single creditor (out of at least hundreds of thousands of creditors) in a single federal bankruptcy case?

B. Scope of Review.

Personal jurisdiction is a mixed question of law and fact. *See Eagle Force Holdings, LLC v. Campbell*, 187 A.3d 1209, 1228 (Del. 2018) (citing *Plummer v. Sherman*, 861 A.2d 1238, 1242 (Del. 2004)). Hence, this Court reviews the Court of Chancery's factual determinations for clear error and its legal conclusions *de novo*. *Id.*; *see also Uribe v. Maryland Auto. Ins. Fund*, 2015 WL 3536574, at *1 (Del. May 21, 2015).

C. Merits of Argument.

Delaware courts apply a two-prong test to determine personal jurisdiction over a nonresident defendant. *AeroGlobal Cap. Mgmt., LLC v. Cirrus Indus., Inc.*, 871 A.2d 428, 438 (Del. 2005). Courts ask first “whether Delaware’s Long Arm Statute is applicable,” and second “whether subjecting the nonresident to jurisdiction in Delaware violates the Due Process Clause of the Fourteenth Amendment (the so-called ‘minimum contacts’ requirement).” *Id.*; *Matthew v. Fläkt Woods Grp. SA*, 56 A.3d 1023, 1027 (Del. 2012) (same). The burden lies on the plaintiff to show that jurisdiction is proper on a motion to dismiss. *AeroGlobal Cap. Mgmt., LLC*, 871 A.2d at 437; *see also Altabef v. Neugarten*, 2021 WL 5919459, at *3 (Del. Ch. Dec. 15, 2021) (citations omitted) (“plaintiffs have the burden to show a prima facie case of personal jurisdiction over a nonresident defendant by demonstrating ‘specific facts,’ and not ‘rely[ing] on mere conclusory assertions’”).

Silver Point fails to carry its burden of showing that jurisdiction is proper under both the Delaware long-arm statute and the due process clause.

1. Appellant fails to surmount the requirements of Section 3104(c)(1).

Silver Point relies on a single hook for long-arm jurisdiction: Section 3104(c)(1), which permits jurisdiction over a nonresident who transacts business in the State. Section 3104(c)(1) requires two elements: (1) a specific transaction of business that occurred in Delaware, and (2) a nexus between that Delaware act and

the claims asserted. *Uribe*, 2015 WL 3536574, at *4 (“the transaction of business or performance of work [] in the State, may supply the jurisdictional basis for suit only with respect to claims which have a nexus to the designated conduct”) (quoting *LaNuova D & B, S.p.A. v. Bowe Co.*, 513 A.2d 764, 768 (Del. 1986)). Silver Point has not cleared either hurdle under Section 3104(c)(1).

a. Appellant fails to establish that the filing of the ministerial Transfer Notice months after the claims arose satisfies Section 3104(c)(1).

Silver Point posits that filing an administrative Transfer Notice on the FTX Bankruptcy docket – four months after its alleged causes of action accrued – constitutes a transaction of business in Delaware sufficient to confer jurisdiction. Not so, for myriad reasons.

i. The Transfer Notice has no nexus to Silver Point’s Claims.

To show a nexus under Section 3104, a plaintiff’s claims must “arise[] from” the Delaware-specific act. *AeroGlobal Cap. Mgmt., LLC*, 871 A.2d at 439; *Otto Candies, LLC v. KPMG LLP*, 2019 WL 994050, at *8 (Del. Ch. Feb. 28, 2019) (“Section 3104 requires [plaintiff’s] claims to ‘arise from,’ not merely be ‘related to,’ [the defendants’] conduct in Delaware.”) (quoting *Microsoft Corp. v. Amphus, Inc.*, 2013 WL 5899003, at *11 (Del. Ch. Oct. 31, 2013)). In other words, a defendant’s Delaware-specific act must “set in motion a series of events which form the basis for the cause of action before the court.” *Applied Energetics, Inc. v. Gusrae*

Kaplan Nusbaum PLLC, 2024 WL 1653743, at *4 (Del. Super. Ct. Apr. 16, 2024), *aff'd*, 2024 WL 5153007 (Del. Dec. 18, 2024); *Sprint Nextel Corp. v. iPCS, Inc.*, 2008 WL 2737409, at *9 n.64 (Del. Ch. Jul. 14, 2008) (citation omitted) (“arise from” language interpreted to encompass party’s “acts within the jurisdiction that were ‘critical steps in the chain of events’ resulting in the cause of action before the court”).

This well-settled standard defeats Appellant’s theory of jurisdiction based on the filing of the Transfer Notice. The filing occurred in November 2023, four months after the alleged offending conduct, the signing of the ACA. A110, A112-114. It could not possibly have set in motion a chain of events from which Appellant’s causes of action arose. *See AeroGlobal Cap. Mgmt., LLC*, 871 A.2d at 439; *accord* Decision at 16 & n.71, 18.

Appellant’s arguments likewise fail under the alternative standard it proposes for finding a nexus: that the Transfer Notice is “an ‘integral component of the total transaction to which [Silver Point’s] instant cause[s] of action relate[.]’” OB at 31. As the Court of Chancery correctly reasoned, that act was “not integral to Buyer’s purported interference with the TC: it is not part of that wrongdoing at all. Nor is it integral to Agent’s unjust enrichment.” Decision at 16-18.

Rule 3001(e) of the Federal Rules of Bankruptcy Procedure (the “Bankruptcy Rules”) sets forth a specific procedural protocol to be followed when a prepetition

claim against a debtor in bankruptcy, such as the Claim here, is transferred during the pendency of a bankruptcy case. Specifically, Bankruptcy Rule 3001(e)(2) provides that “the transferee of a claim that was transferred after a proof of claim is filed must file evidence of the transfer.” Fed. R. Bankr. P. 3001(e)(2)(A). The rule further provides that upon the filing of a notice of transfer, the clerk of court “must immediately notify the alleged transferor,” of the claim and that, absent a timely objection to the transfer by the transferor, “the transferee must be substituted for the transferor” on the debtor’s claims register. Fed. R. Bankr. P. 3001(e)(2)(B) & (C).

Bankruptcy Rule 3001(e) is strictly procedural in nature. *See In re Caesars Ent. Operating Co., Inc.*, 588 B.R. 32, 43 (Bankr. N.D. Ill. 2018) (“Rule 3001(e) is a procedural rule. It governs procedure, not substance.”). Its overarching purpose is to facilitate an orderly distribution process by providing “a mechanism for notice of the transfer [of a claim]” and an opportunity “for each of the claim transferor (giving the transferor notice and opportunity to be heard in the event that it disagrees with the assertion that there was an assignment) and transferee (helping ensure that the transferee will receive the distributions on account of the claim).” *In re LATAM Airlines Grp., S.A.*, 2022 WL 4229500, at *7 (Bankr. S.D.N.Y. Sept. 13, 2022); *accord Dale v. Butler*, 2020 WL 6817059, at *9 (E.D.N.C. Nov. 18, 2020) (purpose of Bankruptcy Rule 3001(e) is ““to ensure that sufficient notice is given when a claim against the debtor is transferred or assigned post-petition””) (quoting *In re Arc*

Energy Corp., 1997 WL 570878, at *5 (4th Cir. Sept. 16, 1997)); *In re Zaleha*, 162 B.R. 309, 315 (Bankr. D. Idaho 1993) (transfer notice “clear[s] the court record of ambiguities regarding who actually holds a claim” and clarifies “who will be entitled to notice regarding the case, and distribution (if any) from the [bankruptcy] estate”).

Conversely, the mere filing of a notice of transfer pursuant to Bankruptcy Rule 3001(e)(2) “cannot abridge or modify any substantive right of a party in interest” with respect to a claim. *In re Arc Energy Corp.*, 1997 WL 570878, at *5; accord *In re Firestar Diamond, Inc.*, 734 F. Supp. 3d 273, 288 (S.D.N.Y. 2024) (claimants “cannot extract substantive rights as to their claims from the procedure outlined in Bankruptcy Rule 3001(e)"); *In re Woodbridge Grp. of Cos., LLC*, 590 B.R. 99, 103 (Bankr. D. Del. 2018) (Rule 3001(e) “recognizes that claims trading occurs and provides for certain procedures governing such transfers,” but does not “impair[] the Court’s authority to determine and enforce applicable non-bankruptcy law” with respect to such transfers); *In re Caesars Ent. Operating Co., Inc.*, 588 B.R. at 43 (Bankruptcy Rule 3001(e) “certainly does not override anyone’s contract rights”). The only practical effect of a transferee’s failure to comply with the requirements of Rule 3001(e) “is that the transferee will not be added to the creditor matrix and will not receive notice of filings in the [bankruptcy] case.” 9A COLLIER ON BANKRUPTCY ¶ 3001.08; see also *In re NutriPlus, LLC*, 2002 WL 31254797, at *9 (Bankr. S.D.N.Y. Sept. 20, 2002) (“[T]he Disbursing Agent has cited no authority, and the

Court is aware of none, that absolves a debtor from the duty to make payment on its allowed claims by reason of the failure of a transferee of a claim to file a Rule 3001(e)(2) notice of transfer.”).

This long line of authority thus confirms that filing the Transfer Notice was a purely ministerial act. It did not confer, and could not have conferred, any substantive rights on Appellees. Instead, each and every substantive right Appellees obtained with respect to the Claim vested, in full, upon the ACA’s execution. A88-89 (ACA § 3).

The plain and unambiguous language of the ACA further confirms that the filing of the Transfer Notice was purely ministerial. Under the ACA, even if Appellees never filed the Transfer Notice, they would have retained their legal and economic rights to the Claim by virtue of a 100% participation interest in the Transferred Rights (as defined in the ACA), which include any distributions made by the FTX debtors to FPG on account of the Claim. A96 (ACA § 15). This participation structure would afford Appellees the “economic equivalent of the Transfer,” whereby FPG agreed to “(i) hold the Transferred Rights on behalf of and for the sole benefit of [Svalbard] and (ii) abide by [Svalbard’s] instructions regarding the Transferred Rights and any action to be taken in connection therewith.” A96 (ACA § 16).

The conclusion under the Bankruptcy Rules, common law, and contract is thus crystal clear: the filing of the Transfer Notice, which conferred no substantive rights on Appellees, was not and could not have conceivably been an “integral component” of Appellant’s causes of action. Decision at 16-18.

Appellant’s criticism of the Court of Chancery’s supposed focus on the “optional” nature of the filing of the Transfer Notice misses the mark. The salient point is that the filing of the Transfer Notice could not have, as Appellant contends, “furthered [Appellees’] scheme” (OB at 31), because the filing of the Transfer Notice did not confer any substantive rights on Appellees.

Appellant’s attempt to dismiss the relevance of the timing of the filing of the Transfer Notice (OB at 35-37) fails for the same reason. That the filing occurred months after the ACA was signed is yet another reason why the filing could not further – much less be integral to – the alleged interference and enrichment arising from the ACA’s execution. Decision at 16 & n.17 (collecting cases).

None of the cases Appellant relies on (OB at 30) are on point. For instance, *Arnold v. Soc’y for Sav. Bancorp, Inc.*, 1993 WL 526781 (Del. Ch. Dec. 17, 1993), *aff’d in part, rev’d in part*, 650 A.2d 1270 (Del. 1994) involved allegations that the defendants breached their duty of candor to shareholders in soliciting their approval for a merger with a Delaware company; the merger (the Delaware act) and nondisclosure (cause of action) were “inextricably related,” because the whole

impetus for the nondisclosure was the merger. *Id.* at *4 (finding “causal nexus”). In *Sample v. Morgan*, 935 A.2d 1046 (Del. Ch. 2007), the defendants’ filing of a certificate amendment with the Delaware Secretary of State for a Delaware corporation was found to be integral to the defendants’ entrenchment scheme, where the filing was a necessary step in the chain of events that gave rise to the alleged breach of fiduciary duty and injury. *See id.* at 1047-48. And in *BrandRep, LLC v. Ruskey*, 2019 WL 117768 (Del. Ch. Jan. 7, 2019), the Court of Chancery found that the defendants’ formation of a Delaware company was part and parcel of their trade secrets conspiracy. *Id.* at *2; *see also* Decision at 17-18 n.75. Here, the opposite is true: the filing of the Transfer Notice had no bearing at all on plaintiff’s claims. It did not further any alleged scheme by Buyer, did not give “legal life” to the ACA, and did not add to Appellant’s alleged injury. Decision at 16-18.

Lastly, Appellant’s two “hypotheticals” (OB at 31-32) are *non sequiturs*. Here, unlike the wayfaring limousine driver or collector of vintage cars about whom Appellant muses, Appellees did not enter the State to “effectuate” the offending conduct, because that conduct had already been effectuated months before the alleged entry. Decision at 14.

Because Appellant cannot show a nexus between the filing of the Transfer Notice and its causes of action, the filing cannot confer jurisdiction under Section 3104(c)(1). *See Solae, LLC v. Hershey Canada, Inc.*, 557 F. Supp. 2d 452, 459-60

(D. Del. 2008) (dismissing complaint where plaintiff could not show “any nexus between [the filing of the UCC statement] in Delaware and the conduct which is the basis of this lawsuit.”); *Sanitec Indus., Inc. v. Sanitec Worldwide, Ltd.*, 376 F. Supp. 2d 571, 574 (D. Del. 2005) (same).

ii. Filing the Transfer Notice does not qualify as a transaction of business in Delaware.

Even if filing the Transfer Notice had a nexus to Appellant’s causes of action (it does not), the exercise of personal jurisdiction over Appellees on this basis is nonetheless inappropriate under Section 3104(c)(1) because that act did not constitute a transaction of business that “actually occur[ed]” in Delaware. *Mobile Diagnostic Grp. Hldgs., LLC v. Suer*, 972 A.2d 799, 804 (Del. Ch. 2009).

For one, AVMF, which is based in the United Kingdom, signed that Transfer Notice in the United Kingdom, and there are no facts demonstrating that either AVMF or Svalbard had any actual contact with or within Delaware when the notice was electronically filed on the PACER docket. A80-81 ¶¶ 10-11; *see, e.g., Kelly v. McKesson HBOC, Inc.*, 2002 WL 88939, at *17 (Del. Super. Ct. Jan. 17, 2002) (“[a]bsent actual conduct in Delaware,” defendant’s “signing of the Registration Statement in California on behalf of a Delaware corporation” was insufficient to establish jurisdiction).

Moreover, there is no support in Delaware law for the notion that the single act of filing a single administrative notice as a creditor in a single federal bankruptcy

proceeding qualifies as “transacting business” sufficient to confer jurisdiction. Indeed, Appellant cites none.

Appellant’s attempts to analogize the filing of the Transfer Notice to the filing of a corporate document with the Delaware Secretary of State are unavailing. Appellant cannot equivocate the filing of a corporate document with the Delaware Secretary of State – long held as “transacting business” – with the filing of an administrative court document, which has never been regarded by any Delaware precedent as such. *Compare, e.g., Raza v. Siemens Med. Sols. USA, Inc.*, 2007 WL 2120521, at *2 n.1 (D. Del. July 23, 2007) (3104(c)(1) unmet, despite allegation that plaintiff participated in multiple Delaware court proceedings), *with In re P3 Health Grp. Holdings, LLC*, 2022 WL 8011513, at *4 (Del. Ch. Oct. 14, 2022) (OB at 29) (formation of Delaware corporation and filing certificate of formation incorporation was transaction of business); *Chandler v. Ciccoricco*, 2003 WL 21040185, at *11 (Del. Ch. May 5, 2003) (OB at 29) (filing certificate with the Delaware Secretary of State was transaction of business because filing “was integral to and effected for the precise purpose of consummating an important commercial transaction”).

Appellant’s attempts to liken filing the Transfer Notice to filing a lawsuit, as in *Sprint Nextel Corp. v. iPCS, Inc.*, 2008 WL 2737409 (Del. Ch. July 14, 2008) and *Yankees Ent. & Sports Network, LLC v. Hartford Fire Ins. Co.*, 634 F. Supp. 3d 203 (D. Del. 2022), *aff’d*, 2023 WL 6291784 (3d Cir. Sept. 27, 2023) (OB at 28-29), are

just as flawed. Unlike commencing and prosecuting an entire lawsuit, filing the Transfer Notice does not constitute “transacting business” under the theory that the filing “protect[ed] a significant business asset,” because as discussed, *supra*, at Section 1(a)(i), the Transfer Notice had no effect on Appellees’ substantive rights to the Claim vis-à-vis other would-be purchasers. *See Sprint Nextel Corp.*, 2008 WL 2737409, at *9 (finding that earlier lawsuit defendants “initiated was designed to protect what is probably one of their most important business assets”). Moreover, both cases were dismissed for lack of personal jurisdiction for the same reason (of many) plaguing Appellant’s lawsuit and based on the same legal standard Appellant urges this Court to reject: the causes of action there did not “arise from” a transaction of business in Delaware. *See id.* at *9-10 (Section 3104(c)(1) requires that the Delaware act “set in motion a series of events which form the basis for the cause of action before the court”) (internal citations omitted); *Yankees Ent. & Sports Network, LLC*, 634 F. Supp. 3d at 210 (plaintiff “has failed to demonstrate any logical or causal relationship between [prior] action and this one”).

In sum, Appellees did not transact business in Delaware within the meaning of Section 3104(c)(1) by filing the Transfer Notice, and that filing lacked the requisite nexus to Appellant’s claims.

b. Appellant fails to establish that the purchase of the Claim, a non-Delaware act, satisfies Section 3104(c)(1).

Appellees also did not transact business in Delaware for purposes of Section 3104(c)(1) through by Buyer's purchase of the Claim. The Claim is not "located" in Delaware, and even if it were, that alone does not establish jurisdiction here.

i. The Claim is not located in Delaware.

The Court of Chancery correctly held (Decision at 19-20) that the Claim is not "located" in Delaware. As a legal entitlement to payment from a debtor in bankruptcy, the Claim is an intangible entitlement. *See Rossdeutscher v. Viacom, Inc.*, 768 A.2d 8, 22 n.49 (Del. 2001) (observing that a "chose (thing) in action" is "an 'intangible' item"), *as revised* (Apr. 2, 2001); *U.S. v. Pink*, 315 U.S. 203, 239 (1942) ("[w]e are dealing with intangible rights, with choses in action"); Decision at 19-20. An intangible asset, by definition, has no fixed physical location. *See Union Nat. Bank of Wilmington v. Topkis Bros. Co.*, 2 A.2d 148, 151 (Del. Ch. 1938) (intangible assets, such as chose in action, "have no visible corpus and no fixed location"); Decision at 19 ("Property in a bankruptcy estate could be located anywhere."). Moreover, the intangible Claim is based on cryptocurrency and other digital assets that existed in FTX customer account(s) prebankruptcy. *Id.* Appellant has made no effort to root either the assets or the account(s) in Delaware. *Id.* For all these reasons, the Claim cannot be deemed a Delaware asset.

Appellant’s arguments to the contrary are wholly without merit. As an initial matter, its contention that the Claim is located in Delaware because “the contract at issue” (*i.e.*, the ACA) “specifically requires that Defendants or their agent take further action in the Delaware Bankruptcy Case to effectuate the transaction and enable Defendants to realize the fruits of their bargain” (OB at 22) is demonstrably false.

That argument is belied by Appellant’s concessions elsewhere in its brief that filing the Transfer Notice was “optional.” OB at 31-33. It is further belied by the plain and unequivocal language of the ACA, which provides in Section 3 that:

Upon Seller’s receipt of the Purchase Price, and in no event prior to the Closing Date, ***Seller***, its successors and assigns, in consideration of the Purchase Price, ***hereby absolutely and unconditionally sells, transfers and assigns unto Buyer, its successors and assigns . . . all of Seller’s right, title and interest in, to and under [the Claim].***

A88-89 (ACA § 3) (emphasis added). Thus, pursuant to the ACA, Buyer acquired full legal title to and all rights and interests in the Claim. The ACA did not require Buyer (or anyone else) to file (or do anything else) in the FTX Bankruptcy (or anywhere else) to perfect Buyer’s title to and be paid on account of the Claim. Indeed, if Buyer chose not to file the Transfer Notice, the Claim amount would be paid to FPG; in that scenario, Buyer could and must take action outside of Delaware to recoup those funds.

Appellant’s reliance on Section 15 of the ACA (OB at 23) is misguided: Section 15 confirms, dispositively, that Buyer’s rights to the Claim vested in full upon the execution of the ACA. Under Section 15, if Buyer failed to file the Transfer Notice, FPG was obligated to “take [] action to pursue and defend the Claim and other Transferred Rights, at the direction of and on behalf of [Appellees].” A96 (ACA § 15). But the purpose of any such action would have been to (i) coordinate direct payment from the FTX debtors to Buyer (rather than, say, FPG, the holder of record) on account of the Claim, or (ii) protect Buyer’s rights in the Claim from a hostile party asserting a competing interest in the Claim – not to perfect Buyer’s title or rights to the claim, which vested in full when the ACA was signed.

Nor is the Claim located in Delaware because the Bankruptcy Court is allegedly the “sole forum” with the authority to “enforce” the Claim. OB at 23-24. Appellant again confuses (a) the enforcement of Buyer’s procedural right (but not obligation) to be paid directly by the FTX debtors on account of the Claim and per the procedures set out in the FTX bankruptcy plan, with (b) the enforcement of Buyer’s substantive rights to the Claim. The latter is certainly not limited to the Bankruptcy Court or a court in Delaware, as evidenced by the ACA’s New York forum selection clause and the TC’s JAMS arbitration clause. *See* A101 (ACA § 35) (“Any and all disputes arising out of or otherwise relating to this Agreement shall be adjudicated in either a federal district court or a state court, in each case, in

the State of New York, or a federal bankruptcy court in the Southern District of New York.”); A84 (TC at 2) (“any dispute under this Agreement shall be determined by arbitration . . . administered by JAMS [] under New York law, held in New York City”). The “involvement” of the Bankruptcy Court in enforcing the Claim is narrow and only required if the FTX debtors or another party-in-interest in the bankruptcy case challenge the validity or amount of the Claim – a pure hypothetical that has not transpired and likely never will. And as Appellant conceded in its own Bankruptcy Court filing, it does not even have standing to object to the Transfer Notice; only FTX does. Decision at 15 & n.66 (citing Fed. R. Bankr. P. 3001(e)(2) & *In re: FTX Trading LTD*, C.A. No. 22-11068, D.I. 4684 (Bank. D. Del.) (“SPCP understands that Federal Rule of Bankruptcy Procedure 3001 purportedly limits the right to object to a transfer of claim other than for security to the alleged transferor.”)).

Appellant’s conclusory say-so that a bankruptcy claim, once “asserted,” “necessarily exists in the jurisdiction in which it has been filed” (OB at 24-25) fares no better. That argument is hardly “self-evident” and “obvious.” OB at 24. Quite the opposite: it has no basis in fact. The Claim was not created by virtue of the FTX bankruptcy case. The underlying basis for the Claim is crypto and fiat currency held in FTX customer account(s) as of the date of filing of the FTX Bankruptcy. As a prepetition claim, the Claim, by definition, predated and existed independently of the filing of the bankruptcy. See Daniel M. Sullivan, *Big Boys and Chinese Walls*,

75 U. CHI. L. REV. 533, 542 n.37 (2008) (“Nothing about the filing of a bankruptcy petition changes the nature of the claim, which predates bankruptcy. The only thing a petition does is allow a bankruptcy court to intervene according to the claims trading remedies.”).

Appellant’s say-so also has no basis in law. Appellant itself acknowledges the “absence of authority directly on point.” OB at 24. And it mischaracterizes the one case it relies on, *Tabacalera Severiano Jorge, S. A. v. Standard Cigar Co.*, 392 F.2d 706 (5th Cir. 1968) (“*Tabacalera*”), which the Decision also discusses. Contrary to Appellant’s assertion, the court in *Tabacalera* did not hold that the situs of indebtedness, an intangible asset, “could be judicially determined,” (OB at 25) but merely found for a “very limited purpose” that the asset was *not* located in Cuba, (*Tabacalera*, 392 F.2d at 716). The court rejected any “fixed rule” for determining the location of indebtedness and held that “[t]he *situs of intangible property is about as intangible a concept as is known to the law.*” *Id.* at 714 (Decision at 20) (emphasis added). Thus, rather than “reinforce” Appellant’s insistence that the Claim “necessarily exists” in Delaware (OB at 25), *Tabacalera* negates it entirely.

Thus, as the Court of Chancery correctly held, the Claim was not located in Delaware.

ii. No part of the Claim purchase occurred in Delaware.

Even if the Claim were located in Delaware (it is not), that alone does not establish personal jurisdiction because the purchase of the Claim was devoid of any ties to Delaware. *See, e.g., Greenly v. Davis*, 486 A.2d 669, 671 (Del. 1984) (affirming dismissal for lack of personal jurisdiction; “negotiation of the alleged contract by residents of Pennsylvania did not amount to a transaction of business in Delaware” under Section 3104(c)(1), even though negotiations concerned proposed sale of stock in Delaware corporation that transacted business in Delaware).

The sale of the Claim was negotiated between two Cayman entities, Svalbard and FPG. A11, A78 ¶ 5. Neither party set foot in Delaware, directed any communications to Delaware, or otherwise had any contact with Delaware (including any lawyers in Delaware) when drafting, negotiating, or signing the ACA or when closing on the transaction. A80 ¶ 10; *accord* Decision at 10 (“As pled, no part of the act of buying the [C]laim, or interfering with [Appellant’s] contract to buy it, occurred in Delaware.”). The contract governing the transaction, the ACA, contained a New York choice of law clause and New York forum selection clause. A101 (ACA § 35). The Claim purchase therefore cannot “amount to a transaction of business in Delaware.” *Greenly*, 486 A.2d at 671; *see also Deutsche Bank AG, v. Devon Park Bioventures, L.P.*, 2021 WL 2711472, at *7 (Del. Ch. June 30, 2021) (dismissing for lack of personal jurisdiction because “[t]wo foreign entities

exchanging an ownership interest in a Delaware entity . . . is not, without more, a transaction of business in Delaware,” even though contract contained Delaware choice-of-law clause); *Crescent/Mach I Partners, L.P. v. Turner*, 846 A.2d 963, 975 (Del. Ch. 2000) (dismissing for lack of personal jurisdiction under Section 3104(c)(1), because “the record does not indicate that significant portions of the agreements were negotiated in Delaware”).

c. Appellant’s remaining attempts to establish jurisdiction under Section 3104(c)(1) fail.

Appellant posits two collateral grounds for jurisdiction under Section 3104(c)(1), based on the “totality of the circumstances” and agency theory. Both lack merit.

Appellant’s “totality of the circumstances” argument (OB at 37-38) fails at the threshold. Appellant failed to raise it in its briefing before the Court of Chancery and is thus precluded from raising it for the first time on appeal. Supr. Ct. R. 8 (“Only questions fairly presented to the trial court may be presented for review.”); *accord Delaware Elec. Co-op., Inc. v. Duphily*, 703 A.2d 1202, 1206 (Del. 1997) (“It is a basic tenet of appellate practice that an appellate court reviews only matters considered in the first instance by a trial court.”); *see also Emerald Partners v. Berlin*, 2003 WL 21003437, at *43 (Del. Ch. Apr. 28, 2003) (“It is settled Delaware

law that a party waives an argument by not including it in its brief.”), *aff’d*, 840 A.2d 641 (Del. 2003).

Additionally, Appellant cites no authority from this Court adopting any “totality of the circumstances” standard in the context of Section 3104(c)(1). Appellant points to a single line in *AeroGlobal* in which this Court stated that “the totality of the circumstances” demonstrated that the defendant in that case transacted business in Delaware (OB at 37), but ignores the broader context in which the Court made this observation. The Court was specifically examining the circumstances surrounding the creation and operation of a Delaware subsidiary by the defendant. *AeroGlobal Cap. Mgmt., LLC*, 871 A.2d at 439. Thus, *AeroGlobal* did not, as Appellant would have this Court believe, articulate a new standard for meeting Section 3104(c)(1) (OB at 38), but rather was dissecting the relevant jurisdictional facts of that particular case.

Even were Appellant correct that the Court of Chancery should have examined the “totality of the circumstances” (it is not), there is no basis in the record to conclude that the Court of Chancery neglected to do so. *See* Decision 19-22. The Court of Chancery carefully parsed each of the purported grounds for jurisdiction under Section 3104(c)(1) raised by Appellant and concluded, rightly, that Appellant had failed to meet its burden to show both that Appellees engaged in relevant Delaware acts and that such alleged Delaware acts had the requisite nexus to

Appellant's causes of action. *See, e.g., id.* at 21 (“Even assuming the Ad Hoc Committee members acted in Delaware, those acts must have a nexus to Plaintiff’s claims.”), *id.* at 20 (“Plaintiff has not pled Buyer has been paid [on account of the Claim]; only that it might. This is a hypothetical future event; even if payment on the claim is a Delaware act, it has not happened yet.”); *id.* at 22 (“Plaintiff asserts personal jurisdiction is proper because Buyer is one of the largest creditors in the Bankruptcy due to its many claims. But there is no nexus between Buyer’s other claims and Plaintiff’s cause of action.”).

Equally unavailing is Appellant’s agency theory for jurisdiction over AVMF. OB at 27. As set forth *supra*, Appellant cannot establish jurisdiction over the alleged agent, Buyer, in the first instance. That failure defeats agency jurisdiction over the alleged principal, AVMF. *See ACE & Co. v. Balfour Beatty PLC*, 148 F. Supp. 2d 418, 425 (D. Del. 2001) (rejecting agency theory of personal jurisdiction where there was no jurisdictional conduct by agent to attribute to principal).

2. Exercising personal jurisdiction over Appellees offends due process.

Last but not least, the exercise of personal jurisdiction over Appellees is improper for the additional reason that it violates “traditional notions of fair play and substantial justice,” and thus does not comport with due process. *Fläkt Woods Grp. SA*, 56 A.3d at 1027.

As this Court is well aware, “to establish jurisdiction over a nonresident defendant, the nonresident defendant’s contacts with the forum must rise to such a level that it should ‘reasonably anticipate’ being required to defend itself in Delaware’s courts.” *AeroGlobal Cap. Mgmt., LLC*, 871 A.2d at 440.

Appellees’ alleged “contacts” with Delaware effectively boil down to Buyer’s status as a creditor in a *single* bankruptcy case pending in Delaware. But that attenuated connection does not come close to meeting the due process threshold. *See Raza*, 2007 WL 2120521, at *4 (“the exercise of personal jurisdiction over Siemens AG would offend the due process principles of fair play and substantial justice,” despite the plaintiff’s allegations that the defendant participated in four Delaware lawsuits, had Delaware legal counsel, and even used Delaware entities for business acquisitions). Nor do Appellant’s causes of action “arise from” or “relate to” that alleged forum contact (OB at 39) for the reasons discussed. *Supra*, at Section 1(a)(i).

Further, Appellant’s position is untenable as a matter of public policy and practice. As the Court of Chancery recognized, “[t]housands of creditors file similar notices before the [Delaware] Bankruptcy Court” in other bankruptcy cases. Decision at 18 n.78. Under Appellant’s theory, each and every one of those filers would be subject to suit in Delaware by a third party seeking to challenge a creditor’s ownership of a bankruptcy claim. The Court of Chancery thus wisely “question[ed] whether those filers could fairly expect to be haled into a Delaware state court to

adjudicate whether they committed a tort against a third party in coming to own that claim.” *Id.* The answer is obvious: no.

Finally, Appellant’s insistence that Appellees somehow “conceded” the due process prong by failing to address this issue in their reply brief before the Court of Chancery (OB at 14, 17, 20) borders on the specious. Appellant simply ignores the fact that Appellees argued repeatedly in their moving brief that exercising personal jurisdiction in this case did not comport with due process. *See* A48 (Mot. to Dismiss at 3) (“Exercising personal jurisdiction over Svalbard and AVMF likewise raises serious constitutional concerns, as neither entity could have reasonably anticipated being haled into this Court based on the scant ‘contacts’ alleged.”); A54 (Mot. to Dismiss at 9) (exercising jurisdiction “lacks statutory authority and violates due process”); A60-61 (Mot. to Dismiss at 15-16) (“exercising personal jurisdiction over Svalbard plainly offends due process” and “creates significant due process concerns”); A62 (Mot. to Dismiss at 17) (“exercising jurisdiction over AVMF would violate constitutional due process”); *see also* A314 (Mot. to Dismiss Supp. Br. at 7) (“The Transfer Notice therefore does not permit the exercise of personal jurisdiction over Defendants under . . . the Constitution.”). That is no concession.

Because exercising jurisdiction over Appellees creates significant due process concerns, the claims against them were properly dismissed.

CONCLUSION

For all of the foregoing reasons, the Court should affirm the Court of Chancery's Decision below.

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January 8, 2026