IN THE COURT OF CHANCERY OF THE STATE OF DELAWARE

IN AND FOR NEW CASTLE COUNTY

CAITHNESS RESOURCES, INC., a New Jersey Corporation,	)	
Plaintiff,	)	
v.	)	Civil Action No. 18073
PHILLIP OZDEMIR and SKYBORNE, INC.,	)	
Defendants.	)	

MEMORANDUM OPINION

Date Submitted: October 12, 2000
Date Decided: November 22, 2000

Michael W. Teichman and Thomas P. Preston, Esquires, REED SMITH SHAW & MCCLAY, Wilmington, Delaware, Attorney for Plaintiff.

Phillip Ozdemir, Smyrna, New York, ***Pro Se.***

STRINE, Vice Chancellor

This opinion addresses a motion to dismiss or stay brought by defendant Phillip Ozdemir, who is representing himselfpro se in this matter. Ozdemir contends that the suit against him is a second-filed action that should be shelved in deference to Ozdemir's allegedly first-filed action in New York (the "New York Action").

The crucial issue in this case is whether Ozdemir is correct that his New York Action was first-filed. The New York Action addresses the same general issues as are addressed by the complaint filed by the plaintiff Caithness Resources, Inc. in this court on May 24, 2000 (the "Delaware Action"), although Ozdemir's New York Action involves additional parties, all of whom are associated with Caithness. Although the New York Action was commenced by dzdemir by the filing of a bare notice and summons on December 2 1, 1999, Ozdemir did not file a complaint in the New York Action until June 28, 2000.

In this opinion, I conclude that the Delaware Action is the first-filed suit. Under New York law, Ozdemir's New York Action would not be deemed first-filed because the filing of a bare notice and summons without a complaint does not qualify for first-filed treatment in that State. This

sensible approach fits with prior law of this court' and the requirement of Delaware law that an action commence with the filing of a complaint spelling out the plaintiffs cause of action.[2] It makes little sense to pay deference to an action as first-filed when the plaintiff does not take the initiative to state his claims.

Because the Delaware Action is first-filed, Ozdernir's motionmust be decided under the doctrine of forum *non conveniens*. Since he has not persuaded me that this is the rare case where a dismissal of a plaintiffs complaint is appropriate because this forum is overwhelmingly and unduly inconvenient to him as a defendant, I deny his motion to dismiss. Likewise, Ozdemir has not persuaded me that a stay is warranted at this time. Therefore, I deny his motion to dismiss or stay.

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[1] *E.g.*, Joyce v. *Cuccia*, Del. Ch., C.A. No. 14953, mem. op. at 8, Jacobs, V.C. (July 24, 1996) (in the context of filing a complaint but not serving it, holding that "plaintiff cannot file a complaint, keep that pleading in his 'back pocket' by withholding service and not informing the adverse party of its pendency, and later, after the defendant has filed his own lawsuit, be heard to argue that the first complaint is a 'first-tiled' action . . . ."); *Stepak v. Tracinda Corp.*, Del. Ch., C.A. No. 8457, mem. op. at 18, Allen, C. (Aug. 18, 1989) ("Where plaintiff takes no steps to actually commence his litigation by summoning the defendant to answer ... while suit proceeds in another jurisdiction, the Delaware action cannot ... be the first filed ....").

[2] Ct. Ch. R. 3(a).

I. Factual Backmound

A. Caithness's Delaware Action

The present action'was initiated by plaintiff Caithness Resources, Inc., a shareholder in nominal defendant, Skyborne, Inc., a Delaware corporation of which Ozdemir is the principal operating officer and a director. Caithness's complaint alleges that Ozdemir breached his fiduciary duties to Skyborne and its stockholders in several material ways: (1) by inducing Caithness, the primary investor in the corporation, to continue to plough money into Skybome, even though the "airborne laser sensor" Skybome was developing had no genuine prospect of being commercially viable; (2) by failing to provide for the adequate maintenance and care of an aircraft (the "DC-3") Caithness procured for Skybome's use, resulting in that aircraft's eventual seizure and sale at public auction by Summit Aviation, Inc. in Delaware; and (3) Ozdemir's allegedly improper conversion of a check sent to him by Skybome for personal, rather than corporate, use.

These claims come at the tail end of a lengthy relationship between Caithness and Ozdemir regarding the airborne laser sensor extending back to the early 1980's. The events raised in the complaint all appear to have occurred before 1997 and may have been raised by Caithness now because

Ozdemir sued Caithness in New York regarding an entirely separate joint venture in December 1999 (the "Unrelated New York Action").

The airborne laser sensor is a device that is intended to detect and nieasure a variety of base and precious metal deposits, hydrocarbon resources, and pipeline leaks. The DC-3 was procured for use by Skybome so that its laser sensor could actually get airborne.

Caithness filed its complaint on May 24, 2000 and served Ozdemir and noniinal defendant Skyborne, Inc. shortly thereafter.

B. Ozdemir's New York Action

On December 2 1, 1999, Ozdemir commenced the New York Action in Chenango County, New York by filing a "bare" notice and summons, as it is known in New York. The notice and summons identified Ozdemir, Skyborne, Inc. and two other corporate affiliates of Skybome as the plaintiffs. Caithness, its principal stockholder James D. Bishop, and three other corporate affiliates of Caithness were identified as defendants.

The notice and summons gave the defendants the following information about the claims to be raised:

> The nature of the action is for breach of contract, breach of fiduciary duty, and negligence.

> The relief sought is a declaratory judgment and money judgment.[3]

Not until some five months later — April 20, 2000 — did Ozdemir and his fellow plaintiffs even serve this summons on the named defendants. That day and five days later, the attorney who was defending Caithness in Ozdemir's Unrelated New York Action, Paul J. Sweeney, contacted Ozdemir's counsel in the Unrelated New York Action, Aaron Dean. While there is a dispute about the exact nature of that conversation, it is undisputed that Sweeney learned that Ozdemir's new New York Action was in fact unrelated to the Unrelated New York Action. On or about May 8, 2000, Caithness, through Sweeney, formally requested a complaint pursuant to § 3012(b) of the New York Civil Practice Law and Rules ("CPLR").[4]

Ozdemir's new counsel for the New York Action, Albert Millus, sought and was granted two extensions from Sweeney by which to file a complaint on behalf of the plaintiffs in the New York Action.[5] In the meantime, Caithness's Delaware Action was commenced by the filing and service of a complaint on Ozdemir and Skybome.

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[3] DX A.

[4] N.Y. Civil Practice Law and Rules § 3012(b) (McKinney 1991).

[5] It is not clear that these extensions could be validly granted without court permission. See id. § 3012(d).

It was not until June 28, 2000 that Ozdemir's complaint in the New York Action was filed and served on Caithness and the other defendants. That complaint alleges that Caithness and its co-defendants had: (1) negligently failed to maintain the DC-3; (2) breached agreements whereby they were allowed to use the DC-3 for non-Skyborne purposes so long as they maintained the aircraft and returned it to Skybome for the corporation's use; and (3) permitted the DC-3 to be seized and sold at auction by Summit Aviation because bills to Summit for care of the DC-3 had not been paid. The complaint also alleged that Bishop, who served with Ozdemir as the other half of Slcybome's two-person board of directors, had breached his fiduciary duties by participating in the same DC-3-related conduct that formed the basis for Ozdemir's other claims. The claims in the complaint were brought derivatively on behalf of Skybome and individually on behalf of Ozdemir.

The co-defendants named in the New York Action along with Caithness and Bishop were all entities alleged to be under the control of Bishop. The complaint in the New York Action alleges that each of the entity defendants has its principal place of business in New York, New York, but that all or most of the entity defendants are also domiciled in

Delaware. Bishop is alleged to be a resident of the State of New York who works out of New York City.

The New York Action was initiated in Chenango County, New York, which is where Skybome operates and Ozdemir lives. Chenango County is in upstate New York. From Norwich, the county seat, it is 203.5 driving miles to New York City and 238 driving miles to Wilmington, Delaware, both with a driving time of 4 hours and 29 minutes.[6]

II. Legal Analysis

A. The Relevant Standards

Ozdemir's motion requires the application of well-settled procedural principles. If the New York Action was in fact "first-filed," then Ozdemir's motion for a stay will be judged under the *Mc Wane* doctrine, which holds that "discretion should be freely exercised in favor of the stay when there is a prior action pending elsewhere, in a court capable of doing prompt and complete justice, involving the same parties and the same issues ...."[7]

By contrast, if the Delaware Action was first-filed, then Ozdemir may obtain a dismissal only if he meets the exacting burden of demonstrating that

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[6] Mapquest (visited Nov. 2 1, 2000) <http://www.mapquest.com>.

[7] *Mc Wane Cast Iron Pipe Corp. v. McDowell- Wellman Eng. Co.*, Del. Supr., 263 A.2d 281,283 (1970).

the weight of the traditional forum *non conveniens* or "*Cyro-Maid*"[8] factors overwhelmingly weigh against the suitability of Delaware as a forum and that Ozdemir therefore faces undue and excessive inconvenience here. To obtain a stay, Ozdemir must show that the relevant forum *non conveniens* factors suggest sufficient inconvenience and hardship to him that this court should stay its hand pending the outcome of his New York Action.*

With these basics in mind, I turn to the most important question raised by this motion: whether the New York Action is first-filed for purposes of the *Mc Wane* doctrine.

B. Is the New York Action First-Filed For Purposes Of The *Mc Wane* Doctrine?

Ozdemir argues that I must treat his New York Action as first-filed because of his filing of a bare summons in that action on December 2 1, 1999, irrespective of the fact that the complaint in that action was not filed and served until June 28, 2000 — a full month after Caithness served its complaint in the Delaware Action.

I reject Ozdemir's argument that his bare bone summons should be treated as sufficient to make the New York Action a "prior [pending] action"

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[8] *General Foods Corp. v. Cryo-Maid, Inc.,* Del. Supr., 198 A.2d 68 1 (1964).

[9] *GTE Mobilnet, Inc. v. Nehalem Cellular, Inc.,* Del. Ch., C.A. No. 13072, 1994 WL 116194, at * 1, Chandler, V.C. (Mar. 17, 1994) *(citing ANR Pipeline Co. v. Shell Oil Co.,* Del. Supr., 525 A.2d 991,992 (1987)).

under Mc *Wane*. The *Mc Wane* doctrine reflects the weight this state places on comity towards its sister states and the respect that this state has for the choice of forum made by' a diligent plaintiff. In this case, none of those underlying principles buttress Ozdemir's argument that his New York Action should be treated as first-filed. To the contrary, those principles cut against him.

Settled New York law holds that an action is not first-filed for purposes of New York law's counterpart to the *Mc Wane* doctrine unless a complaint has been filed and served on the defendants." The mere filing of a bare notice and summons does not suffice." Although Ozdemir would have me read this rule as only applying in situations where it aids the party who instituted the "bare notice and summons" prior action, he provides me with no case law that supports that proposition. Furthermore, there are cases

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[10] "[T]he well established rule ... is that an action commenced merely by service of a summons with notice is not a 'prior action pending;' service of a complaint is required." *Kevorkian v. Harrington,* 158 Misc.2d 464, 467, 601 N.Y.S.2d 522,524 (July 28, 1993) *(citing Louis R. Shapiro Inc. v. Milspemes Corp., 20* A.D.2d 857,248 N.Y.S.2d 85 (Apr. 2, 1964); *Hirsch v. Manhattan Ry. Co., 84* App.Div. 374, 377-78, 82 N.Y.S. 754,757 (June, 1903); *Stevenson v. Diamond Fuel Co.,* 198 App.Div. 345, 190 N.Y.S. 379 (Nov. 4, 1921); *United Enterprises, Ltd. v. Hill, 185* A.D.2d 206,587 N.Y.S.2d 160 (July 23, 1992); *Sotirakis v. United Services Automobile Ass 'n.,* 100 A.D.2d 931,474 N.Y.S.2d 843 (Apr. 23, 1984); *John J. Campagna Jr., Inc. v. Dune Alpin Farm Associates, 81* A.D.2d 633, 634, 438 N.Y.S.2d 132 (Apr. 21, 1981)).

[11] See *id.*

that apply the first-filed rule outside of the unique context in which he claims the rule emerged.[12]

Notably, the New York rule also makes sense as Delaware public policy. Under this court's approach to pleading, a lawsuit must be initiated by the filing and service of a complaint that spells out the plaintiffs claims.[13] The *McWane* doctrine protects a plaintiff who diligently filed a lawsuit in another state that is capable of adjudicating a case fairly from having her choice of forum divested by a subsequently filed action by the defendant in this state. The doctrine, however, is not meant to provide comfort to indolent plaintiffs who do no more than file a placeholder in another state without a complaint that informs the defendant of the claims it faces.

Indeed, this court has held that an action in a foreign forum that has been commenced by the mere filing of a complaint is not entitled to first-

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[12] For example, even Ozdemir cites a recent unpublished New York case that clearly holds that a summons served with notice but without a complaint does not constitute a pending action in New York. *United Enterprises, Ltd. v. Hill, N.Y.* Gen. Term, Index No. 19203/91, Baer, J. (Feb. 20, 1992) (ORDER) *(citing John J. Campagna, Jr., Inc., 8* 1 A.D.2d 633; *Sotirakis,* 100 A.D.2d 93 1; D. SIEGEL, NEW YORK PRACTICE 391 (2d ed. 1991); 4 J. WEINSTEIN, H. KORN & A. MILLER, NEW YORK CIVIL PRACTICE ¶ 32 11.20 (1991)). In *United Enterprises,* it was the plaintiff who had filed a bare notice and summons and the court granted defendant's motion to dismiss in favor of an action the defendant had filed because the bare notice and summons did not suffice to establish the plaintiffs preferred case as a first-filed action even though the plaintiffs bare notice and summons was filed before **the** defendant's complaint was served. *Id.* at 2.

[13] Ct. Ch. R. 3(a) & 4(a).

filed treatment if the plaintiff has not taken any 'steps to serve the complaint. In so ruling, the court noted that:

> The formality of filing a complaint, while taking no step to actually commence litigation, cannot alone have significance .... Where plaintiff takes no steps to actually commence his litigation by summoning the defendant to answer. ..., while suit proceeds in another jurisdiction, the [plaintiffs] action cannot in any material respect be said to be the first filed action for purposes of determining in which jurisdiction the litigation should most appropriately proceed. [14]

This approach was derived from a case in which a litigant claiming first-filed status for a Delaware action filed the complaint first, but did not serve it.[15] This court denied first-filed status to the Delaware action.[16]

It is not too much to ask that a party claiming first-filed status have at least shown the diligence to file and serve a complaint setting forth claims upon the defendants. When actual service of a complaint has been made on the defendants and is followed by a later-filed mirror-image suit in this court, this court may confidently presume that the policy concerns identified in *McWane* apply in favor of the prior-filed foreign action. That scenario does not exist here.

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[14] Joyce. mem op at 8-9 *(quoting Stepak,* mem. op. at *17-18).*

[15] *Stepak*, mem. op

[16] *Id.* at 17-18

Allowing parties to obtain first-filed status on the basis of a mere marker that does not spell out claims invites the very sort of forum-shopping that *Mc Wane* supposedly disfavors. As important, such a practice would force this state's trial courts to engage in time-intensive and unseemly factual inquiries into whether the party claiming first-filed status had, through means other than service and prosecution of a written complaint, somehow taken steps to prosecute and give the opposing party information about the claims at issue as to constitute a sufficient substitute.[17] This court,

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[17] In this case, for example, I thought that it might shed light on the matter to have affidavits from the attorneys involved in discussing the extension granted for Ozdemir's New York Action. My naïve thought was that members of our profession might have an identical recollection of events. If the identical recollection of all the attorneys was that Caithness's attorneys had been informed with some degree of precision as to what Ozdemir's claims in the New York Action were, then I toyed with the notion that the New York and Delaware Actions might be treated as simultaneously filed. I held in my mind the tentative notion that if such notice had been given to Caithness orally, then it was fair to give each case equal status because Caithness would have had some general sense of what the New York Action was before it filed the Delaware Action. By contrast, if Ozdemir's attorneys admitted that they never provided Caithness's attorneys with any substantial information regarding the claims Ozdemir attempted to raise in the New York Action, this would tend to confirm that the New York Action should not be treated as first-filed.

Alas, my naivete was confirmed when the affidavits produced a dispute of fact. Ozdemir's former attorney, Mr. Dean, indicates that he provided Caithness's attorney, Mr. *Sweeney*, with a basic description of the Ozdemir's likely claims in the New York Action. Mr. Sweeney denies that this is so, explains the implausibility of Mr. Dean's contention, and notes that the attorney, Mr. Millus, who actually filed the complaint in the New York Action for Ozdemir does not contend that he informed Sweeney of the nature of Ozdemir's claims.

I decline to hold a factual hearing to resolve this dispute, although it appears to me that Mr. Sweeney's rendition of what transpired is the more plausible and that, at the most, Sweeney received a cursory description of Ozdemir's likely claims and an assurance that they were not relevant to the Unrelated New York Action.

This venture has taught me a few lessons. I share only one, which is that the results of the venture demonstrate the impracticality of resting first-filed status on less than the filing and service of a complaint. Anything less than that encourages torpid litigation practice and plunges this court into a morass.

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in particular, has a rich enough body of *McWane* case law already; no legitimate public purpose would be served by supplementing it with hair-splitting and case-specific analyses of questions like these, especially when the law of the relevant state in which the foreign action is pending would not give the action first-filed status.'*

C. Is Ozdemir Entitled To A Dismissal Or Stay Under Forum *Non Conveniens* Principles?

Without a belabored discussion, I conclude that the forum *non conveniens* factors do not weigh in favor of a stay of the Delaware Action, and certainly do not approach the threshold required for dismissal.[19] While there is no doubt that Ozdemir would prefer to litigate this case in his home county, he cannot plausibly claim any undue inconvenience from having to defend himself against claims for breach of fiduciary duty in this court. Ozdemir voluntarily chose to serve as the director and principal operating officer of a Delaware corporation. He is an intelligent man who cannot have been ignorant of the possibility that he would face a suit in Delaware in the

[18] New York courts have held that "[i]t is not permissible to show by par01 proof what an action is for, if the summons only was served." *Kevorkian,* 158 Misc.2d at 467 *(citing Hirsch, 84* App.Div. at 377).

[19] *Taylor v. LSI Logic Corp.,* Del. Supr., 689 A.2d 1196, 1198-99 (1997) (listing the *Cryo-Maid* forum *non-conveniens* factors: "(1) the relative ease of access to proof; (2) the availability of compulsory process for witnesses; (3) the possibility of the view of the premises; (4) whether the controversy is dependent upon the application of Delaware law which the courts of this state 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.").

event of a dispute between himself and Skybome's other stockholders.[20]

In the Delaware Action, Caithness raises claims that arise solely under Delaware law. Although these claims are not particularly novel, this court will notlightly deprive a stockholder of a Delaware corporation of its ability to press first-filed fiduciary duty claims here, given that access to our judicial *system* is a factor that leads many companies to choose this state as their home. That is not to say that the courts of New York are not competent to decide Delaware law questions. Moreover, it is clear that Ozdemir would prefer, of course, to have his own claims tried in New York because some of them allegedly arise under New York law, rather than Delaware law. His mere preference, however, is insufficient to justify a stay or dismissal because giving weight to that preference would simply elevate his desires over that of Caithness in having a Delaware court address its Delaware law claims. This is especially so when Ozdemir chose to conduct his relationship with Caithness and Bishop through a Delaware corporation.[21]

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[20] 10 Del.C.§ 3114.

[21] If joint venturers who serve as members of governing bodies of Delaware entities would like to confine disputes between themselves to a chosen and convenient forum, they would be well-advised to contract to that end. In the absence of such a contract, such joint venturers are on notice of the possibility that they will have to defend fiduciary duty claims in this court brought against them by their co-investors. See, e.g., 10 Del. C. § 3 114 (corporations); 6 Del. C. § 17-109 (limited partnerships); 6 Del. C. § 18-109 (limited liability companies).

Thus, while this factor is not particularly important here, it also provides no basis to disturb Caithness's choice of forum.

Likewise, while Ozdemir's chosen forum may have some moderately better access to proof and better capability to compel the attendance of trial witnesses, he has made no convincing case that this is so. Other than Ozdemir and Bishop themselves, whose trial testimony is available here, it is not clear who the other witnesses will be or where they live. Nor does there appear to be any hindrance in obtaining jurisdiction over all of the defendants in the New York Action here, given their domiciles and alleged control by Bishop. And because the DC-3 was maintained for most of the relevant period at various airports outside of New York, the State of New York is not preferable as a forum to Delaware in terms of witness or documentary discovery regarding its maintenance and condition. Indeed, Delaware has a modest advantage in this regard, because the DC-3 spent its last days in Skyborne's possession at Summit Aviation in Middletown, Delaware. Thus, this court would have the ability to issue compulsory process to witnesses at the Summit facility.[22]

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[22] The only "premises" the court or the parties would need to inspect are the airborne laser sensor and the DC-3. *Cryo-Maid*, 198 A.2d at 684 (listing "the possibility of the view of the premises, if appropriate*' as one of the forum non *conveniens* factors). The DC-3 was last in Middletown, Delaware. The sensor is in Ozdemir's home county. While the Delaware Action does raise the question of the viability of that sensor, it is quite unlikely that the court would desire to see the sensor in person. Rather, expert testimony about the sensor's function would suffice and the

In coming to the conclusion that this court is not less convenient that Ozdemir's preferred locale, the court has also taken into account the fact that Wilmington, Delaware is not much further from Ozdemir's home than New York City. That is, this is not a case where the non-Delaware forum is located in the same community as all the parties work and live on a daily basis. Ozdemir has no problem requiring the defendants to travel 260 or so miles from New York City to his rural county home for trial. Why Ozdernir cannot make a slightly longer trip to Delaware for trial is not apparent.[23] This is especially so since I would obviously intend to manage the discovery process so that depositions could be taken in locations as convenient as possible for all the parties.[24]

I give more weight to two of Ozdemir's other concerns. First, Ozdemir contends that if I deny his motion to dismiss or stay he will be handicapped because he has counsel in New York who are willing to handle

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court could easily watch a videotape if necessary. In this regard, the approach the court contemplates is more common than not. Moreover, it is obviously common for experts to have to do some travel in advance of their testimony. If the parties require experts regarding the sensor, the experts can travel to see it in advance of rendering their written reports and then travel here for trial. For all these reasons, the "premises" factor is of little significance here.

[23] See ***supra*** text accompanying note 6.

[24] See D. WOLFE, JR. & M. PITTENGER, CORPORATE AND COMMERCIAL PRACTICE IN THE DELAWARE COURT OF CHANCERY § 5-2(b), at 217 (1998) ("the Delaware courts have been reasonably consistent in finding that, when potential witnesses and/or documents are located primarily in East Coast commercial centers with convenient transportation access to Wilmington, a defendant is not placed in a position of hardship by litigating in Delaware.").

the aircraft dispute on a contingency fee basis. If that is true, however, I fail to see why they would not be willing to proceed in this court on the same basis, after obtaining admission *pro hac vice*. The court is prepared to do what it can to minimize excessive costs to Ozdemir and Skyborne,[25] but is not prepared to give determinative weight to unproven contentions that a director of a Delaware corporation and the corporation itself lack the resources to litigate a breach of fiduciary duty action in Delaware.[26]

Ozdemir's other concern is that the procession of the Delaware Action will deny him the benefits of his December, 1999 filing in New York for statute of limitations purposes. He is concerned that his claim in the New York Action for negligence was filed on the last day of the three-year period for negligence claims under New York law.[27] He believes that this day was December 2 1, 1999 because that was three years after the day the DC-3 was sold at sheriffs sale by Summit Aviation.

While I can understand his concern, I do not think it justifies a stay or dismissal of Caithness's Delaware Action at this time. My failure to stay or

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[25] In this regard, Ozdemir and his New York counsel should note Court of Chancery Rule 170(d).

[26] That is, while this factor may be given appropriate weight, particularly when the connection between Delaware and the claims at issue is insubstantial, *IM2 v.Tirex*, Del Ch., C.A. No. 18077, mem. op. at 11 n. 15, Strine, V.C. (Nov. 2, 2000), it alone provides an inadequate basis to deprive a plaintiff of an otherwise convenient Delaware forum.

[27] Oral Argument, tr. at 8-12.

dismiss in no way compels the New York court handling Ozdemir's New York Action to dismiss that case. Nor have the parties presented any briefing on the statute of limitations question. If there is a statute of limitations problem, it would seem to plague Caithness's claims as well.[28] It is not apparent to me how Caithness will be able to press its claims and yet deny Ozdemir's right to make his corresponding counterclaims. For today's purposes, however, it is sufficient that there is no threat to Ozdemir's claims from a decision to allow this litigation to go forward. These issues can be revisited later in this case if necessary.

As of now, however, Ozdemir has not convinced me that this is an inconvenient forum for the procession of the parties' claims against each other related to the DC-3 or for the procession of Caithness's other fiduciary duty claims. It is obviously preferable that the parties' claims be tried in one forum or at least be consolidated as a practical matter for discovery purposes.[29] But it is not clear that Ozdemir's preferred forum is sufficiently more convenient to justify denying Caithness its ability to proceed in its chosen forum

[28] As noted, the parties advance claims based on events that largely, if not exclusively, took place over three years from the time the bare notice and summons was filed in the New York Action.

[29] It is, I think, clear by now that similar litigation is pending in New York. *Parvin v. Kauffman*, Del. Supr., 236 A.2d 425,427 (1967). That fact is of little help in deciding this motion other than to highlight the obvious reality that it would be better to proceed in a single forum; it does little to help decide which forum is preferable.

III. Conclusion

For the foregoing reasons, Ozdemir's motion to dismiss or stay is hereby DENIED. IT IS SO ORDERED.