

IN THE COURT OF CHANCERY OF THE STATE OF DELAWARE

SHARON L. MEDEK, individually and)
as guardian for Ryan Stevens,)
)
Plaintiff,)
)
v.) C.A. No. 2559-VCP
)
JOHN W. MEDEK, CMH, INC.)
(f/k/a Medek, Inc.), a Delaware corporation,)
PCCW, INC. (f/k/a Car Wash of Prices)
Corner, Inc.), a Delaware corporation,)
and COLLEEN HARBISON,)
)
Defendants.)

MEMORANDUM OPINION

Submitted: March 5, 2008
Decided: September 10, 2008

Rick S. Miller, Esquire, FERRY, JOSEPH & PEARCE, P.A., Wilmington, Delaware,
Attorney for Plaintiff

Leo John Ramunno, Esquire, LEO JOHN RAMUNNO, ATTORNEY AT LAW,
Wilmington, Delaware, *Attorney for Defendants CMH, Inc., PCCW Inc., and Colleen
Harbison*

PARSONS, Vice Chancellor.

Although this action involves claims under the Uniform Fraudulent Transfer Act¹ (“UFTA”) and for breaches of contract, the dispute arises from the dissolution of two marriages and the resulting property and financial settlements. For the reasons stated in this opinion, I deny Defendants’ Motion to Dismiss on grounds of lack of subject matter jurisdiction and conclude that this Court may and will exercise jurisdiction over the controversy. I also deny Plaintiff’s Motion for Partial Summary Judgment on the purely legal contract claim, except to the extent it relates to Defendants’ affirmative defenses of laches and waiver. I grant summary judgment in Plaintiff’s favor on those two defenses.

I. FACTUAL BACKGROUND

A. The Parties

Plaintiff, Sharon L. Medek, is an individual who resides in New Castle County, Delaware.

Defendant John W. Medek, also known as Wes Medek, is an individual who currently resides in Florida.

Defendant Colleen Harbison is an individual who resides in New Castle County, Delaware. Harbison is the sole shareholder of Defendants CMH, Inc. and PCCW, Inc., two Delaware corporations that were known formerly as Medek, Inc. (“Medek”) and Car Wash of Prices Corner, Inc. (“Car Wash”), respectively.

¹ 6 *Del. C.* §§ 1301-1311.

B. The Facts²

Plaintiff and Defendant Wes Medek were married on February 20, 1987, and divorced by decree of the Family Court of the State of Delaware on October 29, 1998.³ Before their divorce, Plaintiff and Defendant Wes Medek each owned a 50% interest in Medek and Car Wash. Under the Settlement Stipulation and Order (“SSO”) entered by the Family Court on June 25, 1999, Plaintiff transferred to Defendant Wes Medek her 50% interest in both corporations.⁴ Among other things, the SSO required Defendant Wes Medek to cause Car Wash to provide health, medical, and dental insurance to Plaintiff for up to fifteen years from August 4, 1999, “as long as [Plaintiff] qualifies for such coverage pursuant to the terms of the Plan.”⁵ The SSO further required Defendant Wes Medek to personally guarantee all obligations under the SSO and to cause Car Wash to guarantee those obligations, as well.⁶ In the SSO, Defendant Wes Medek also undertook to cause Medek to enter into a consulting agreement with Plaintiff, entitling her to an annual salary of \$66,667 payable at \$1,282.06 per week for fifteen years in

² Because Plaintiff seeks summary judgment in her favor, I have described the facts in the light most favorable to Defendants.

³ Pl.’s Opening Br. in Supp. of Her Mot. for Partial Summ. J. as to Count II of the Am. Compl. (“POB”) Ex. A, Settlement Stipulation and Order, at 1.

⁴ *Id.* at 11.

⁵ *Id.* at 15.

⁶ *Id.* at 18.

exchange for “such services to the corporation as directed and required by its officers and directors.”⁷

On August 4, 1999, Plaintiff and Medek entered into a Consulting Agreement consistent with the terms described in the SSO.⁸ The Consulting Agreement did not refer to Car Wash or to insurance coverage for Plaintiff. Plaintiff received the consulting salary and medical and dental insurance until the end of August 2006.⁹

On September 29, 1999, Car Wash and Defendant Wes Medek signed a Guaranty “with respect to the indebtedness and liabilities of Medek, Inc. . . . to [Plaintiff].”¹⁰ The Guaranty defines “indebtedness” as “all indebtedness of [Medek, Inc.] to [Plaintiff] incurred or existing from time to time pursuant to the Settlement Stipulation and Order and the Consulting/Employment Agreement, or any instrument or document delivered to [Plaintiff] in connection therewith or incurred or existing from time to time in connection with such Order”¹¹

⁷ *Id.* at 13.

⁸ POB Ex. B, Consulting Agreement, at 2-4. The Consulting Agreement contained noncompetition and nondisclosure clauses that restricted Plaintiff’s freedom of action.

⁹ POB Ex. E, Sharon Medek Aff., ¶ 6.

¹⁰ POB Ex. C, Guaranty, at 1.

¹¹ *Id.*

Defendants Harbison and Wes Medek married each other in April 2000 and then separated in April 2003.¹² On April 12, 2005, Defendant Wes Medek transferred 50% of his total interest in Medek and Car Wash to Defendant Harbison in exchange for her personal guaranty of a \$900,000 loan taken out by the entities and secured by their assets.¹³ On March 17, 2006, Defendants Harbison and Wes Medek entered into a Property and Financial Matters Settlement Agreement (“PFMSA”) that, *inter alia*, transferred Wes Medek’s remaining 50% interest in Medek and Car Wash to Harbison.¹⁴ Harbison and Wes Medek were divorced on September 27, 2006.¹⁵

The weekly payments to Plaintiff contemplated by the Consulting Agreement ceased after August 31, 2006. PCCW also dropped Plaintiff from its insurance coverage after August 31, 2006.

During this litigation, Defendant Harbison flew to Miami, Florida on September 20, 2007 to meet Defendant Wes Medek and discuss Plaintiff’s claims that CMH and PCCW were obligated for the debts incurred under the SSO, Consulting

¹² Defs.’ Colleen Harbison, CMH, Inc., and PCCW, Inc.’s Answering Br. in Opp’n to Pl.’s Mot. for Partial Summ. J. and Opening Br. on Their Mot. to Dismiss (“DAB”) Ex. A, Harbison Aff., ¶ 4.

¹³ *Id.* ¶ 8.

¹⁴ POB Ex. D, PFMSA, at 1-2. The transfers of interests in Medek and Car Wash, referred to as PCCW in the PFMSA, made Defendant Harbison the sole shareholder and owner of both corporations. Sometime after Defendant Harbison obtained sole ownership of Medek and Car Wash, the names of the entities were changed to CMH, Inc. and PCCW, Inc., respectively. *See* Harbison Aff. ¶ 5.

¹⁵ Harbison Aff. ¶ 4.

Agreement, and Guaranty.¹⁶ During this meeting, Defendant Wes Medek allegedly stated that he and Plaintiff had agreed that Plaintiff would seek payment of Wes Medek's obligations from Defendants Harbison, CMH, and PCCW.¹⁷ Wes Medek also claimed to have paid Plaintiff \$150,000 in partial satisfaction of the debt owed to her.¹⁸

C. Procedural History

Plaintiff filed her First Amended Complaint ("Amended Complaint") in this Court on July 27, 2007, naming Wes Medek, CMH, PCCW, and Harbison as Defendants.¹⁹ Count I of the Amended Complaint alleges violations of the UFTA in connection with Defendant Wes Medek's transfers of his interests in CMH and PCCW to Defendant Harbison in 2005.²⁰ Count II asserts a breach of contract claim relating to the SSO, Consulting Agreement, and Guaranty.²¹ In Count III, Plaintiff states a breach of fiduciary duty claim relating to a trust that Defendant Wes Medek agreed under the SSO to maintain and fund with a life insurance policy. One of the beneficiaries of the trust

¹⁶ *Id.* ¶ 9.

¹⁷ *Id.* ¶ 10.

¹⁸ *Id.*

¹⁹ Am. Compl. ¶¶ 1-5.

²⁰ *Id.* ¶¶ 17-27. Count I of the Amended Complaint also alleges a violation of the UFTA in connection with the transfer of certain real property located in New Castle County, Delaware. *Id.* ¶ 17. Under the PFMSA, Defendant Wes Medek "relinquish[ed] his rights of title, equity, ownership and interest" in the property. PFMSA at 1.

²¹ Am. Compl. ¶¶ 34-35.

was Plaintiff's son. Count III alleges Wes Medek allowed the insurance policy to lapse, and seeks to have Plaintiff installed as successor trustee of the trust.²²

Defendants Harbison, CMH, and PCCW answered the Amended Complaint and filed a cross-claim against Defendant Wes Medek on August 16, 2007. On October 12, 2007, Plaintiff moved for partial summary judgment as to her Count II and as to Defendants' affirmative defenses. Defendants Harbison, CMH, and PCCW filed an answering brief on January 7, 2008, and concurrently moved to dismiss this case for lack of subject matter jurisdiction.²³

II. ANALYSIS

Broadly, Plaintiff seeks summary judgment on her claim that Defendants Harbison and CMH breached the Consulting Agreement by ceasing weekly payments to her. Plaintiff also seeks summary judgment against PCCW as guarantor for Wes Medek's breach of the SSO and for CMH's breach of the Consulting Agreement. Plaintiff requests this Court to award her the present value of the Consulting Agreement from CMH and PCCW, and to find that PCCW unconditionally guaranteed the obligations of CMH. Defendants oppose the motion for summary judgment as premature and further move to dismiss this litigation for lack of subject matter jurisdiction. Specifically,

²² *Id.* ¶¶ 46-47. On December 21, 2007, I granted Plaintiff's motion for judgment by default as to Count III, thereby removing Wes Medek as trustee of the irrevocable trust at issue and appointing Plaintiff to that position. Order ¶¶ 2-4, Dec. 21, 2007.

²³ Pl.'s Reply Br. in Supp. of Her Mot. for Partial Summ. J. as to Count II of the Am. Compl. and Resp. to Defs.' Mot. to Dismiss ("PRB") at 1.

Defendants aver that Plaintiff has an adequate remedy at law for all claims set forth in Counts I and II of the Amended Complaint and makes no cognizable claim in equity over which this Court may exercise its jurisdiction.²⁴

A. Subject Matter Jurisdiction

1. The applicable standard

The Court of Chancery will dismiss an action for want of subject matter jurisdiction “if it appears from the record that the Court does not have jurisdiction over the claim.”²⁵ The plaintiff “bears the burden of establishing this Court’s jurisdiction, and where the plaintiff’s jurisdictional allegations are challenged through the introduction of

²⁴ The Order entered on December 21, 2007, removing Defendant Wes Medek as trustee of the trust addressed in Count III of the Amended Complaint and replacing him with Plaintiff, effectively mooted Count III. Although Count III arguably sought equitable relief, neither party relied on it as a basis for subject matter jurisdiction over Count II. In the briefing on the pending motions, Plaintiff indicated that she seeks damages based on Wes Medek’s failure to maintain the life insurance policy, but I view that claim as a component of Count II. Regarding Wes Medek and the corporate Defendants’ obligations under the SSO and Guaranty, Plaintiff did not argue that this Court’s jurisdiction over Count III is a basis for exercising cleanup jurisdiction over either Count I or II. Moreover, I find the facts underlying Count III are sufficiently distinct and segregable from the facts relevant to Counts I and II as to make them easily severable. Accordingly, in the exercise of my discretion, I decline to use this Court’s jurisdiction over Count III as a basis for asserting ancillary subject matter jurisdiction over any of Plaintiff’s other claims under the cleanup doctrine, discussed *infra* Part II.A.3.

²⁵ *AFSCME Locals 1102 & 320 v. City of Wilmington*, 858 A.2d 962, 965 (Del. Ch. 2004) (internal citation omitted).

material extrinsic to the pleadings, he must support those allegations with competent proof.”²⁶

This Court is of limited jurisdiction.²⁷ As Delaware’s constitutional court of equity, this Court can acquire subject matter jurisdiction over a case in three ways: (1) the invocation of an equitable right;²⁸ (2) the request for an equitable remedy when there is no adequate remedy at law;²⁹ or (3) a statutory delegation of subject matter jurisdiction.³⁰ “[T]he Court of Chancery will not exercise subject matter jurisdiction

²⁶ *Yancey v. Nat’l Trust Co.*, 1993 WL 155492, at *6 (Del. Ch. May 7, 1993) (internal citation omitted).

²⁷ The issue of subject matter jurisdiction is so crucial that it may be raised at any time before final judgment. *See Appoquinimink Educ. Ass’n v. Appoquinimink Sch. Dist.*, 2003 WL 1794963, at *3 n.24 (Del. Ch. Mar. 31, 2003).

²⁸ *See* 10 *Del. C.* § 341 (“The Court of Chancery shall have jurisdiction to hear and determine all matters and causes in equity.”); *Christiana Town Ctr. LLC v. New Castle County*, 2003 WL 21314499, at *3 (Del. Ch. June 6, 2003) (“Equitable rights are rights that have traditionally not been recognized at common law. The most common example of equitable rights in this court are fiduciary rights and duties that arise in the context of trusts, corporations, other forms of business organizations, guardianships, and the administration of estates.”); *Azurix Corp. v. Synagro Techs., Inc.*, 2000 WL 193117, at *2 (Del. Ch. Feb. 3, 2000).

²⁹ 10 *Del. C.* § 342 (“The Court of Chancery shall not have jurisdiction to determine any matter wherein sufficient remedy may be had by common law, or statute, before any other court or jurisdiction of this State.”); *Christiana Town Ctr.*, 2003 WL 21314499, at *3 (“Equitable remedies . . . may be applied even where the right sued on ‘is essentially legal in nature, but with respect to which the available remedy at law is not fully sufficient to protect or redress the resulting injury under the circumstances.’”) (quoting DONALD J. WOLFE, JR. & MICHAEL A. PITTENGER, CORPORATE AND COMMERCIAL PRACTICE IN THE DELAWARE COURT OF CHANCERY § 2-3[b] (2001 ed.)).

³⁰ *See Candlewood Timber Group, LLC v. Pan Am. Energy, LLC*, 859 A.2d 989, 997 (Del. 2004).

‘where a complete remedy otherwise exists but where plaintiff has prayed for some type of traditional equitable relief as a kind of formulaic ‘open sesame’ to the Court of Chancery.’”³¹

“The burden of establishing the court’s subject matter jurisdiction rests ‘with the party seeking the Court’s intervention.’”³² This court may consider evidence outside the pleadings in deciding motions under Rule 12(b)(1).³³ “In deciding whether or not equitable jurisdiction exists, the Court must look beyond the remedies nominally being sought, and focus upon the allegations of the complaint in light of what the plaintiff really seeks to gain by bringing his or her claim.”³⁴ In other words, “the court must address the nature of the wrong alleged and the available remedy to determine whether a legal, as opposed to an equitable remedy, is available and sufficiently adequate.”³⁵

³¹ *Christiana Town Ctr.*, 2003 WL 21314499, at *3 (quoting *IBM Corp. v. Comdisco, Inc.*, 602 A.2d 74, 78 (Del. Ch. 1991)).

³² *Maloney-Refaie v. Bridge at Sch., Inc.*, 2008 WL 2679792, at *7 (Del. Ch. July 9, 2008) (quoting *Ropp v. King*, 2007 WL 2198771, at *2 (Del. Ch. July 25, 2007)).

³³ Ct. Ch. R. 12(b)(1); *Sloan v. Segal*, 2008 WL 81513, at *6 (Jan. 3, 2008) (citing *Simon v. Navellier Series Fund*, 2000 WL 1597890, at *5 (Del. Ch. Oct. 19, 2000)); see also *Maloney-Refaie*, 2008 WL 2679792, at *7 (citing *NAMA Holdings, LLC v. Related World Mkt. Ctr., LLC*, 922 A.2d 417, 429 n.15 (Del. Ch. 2007)).

³⁴ *Candlewood Timber Group*, 859 A.2d at 997. See also *Diebold Computer Leasing, Inc. v. Commercial Credit Corp.*, 267 A.2d 586, 588 (Del. 1970).

³⁵ *IMO Indus., Inc. v. Sierra Int’l, Inc.*, 2001 WL 1192201, at *2 (Del. Ch. Oct. 1, 2001).

“The Court of Chancery . . . routinely decides controversies that encompass both equitable and legal claims.”³⁶ “[I]f a controversy is vested with equitable features which would support Chancery jurisdiction of at least part of the controversy, then the Chancellor *has discretion* to resolve the remaining portions of the controversy as well.”³⁷ “Once the Court determines that equitable relief is warranted, even if subsequent events moot all equitable causes of action or if the court ultimately determines that equitable relief is not warranted, the court retains the power to decide the legal features of the claim pursuant to the cleanup doctrine.”³⁸

The Court of Chancery, having acquired jurisdiction over some part of the controversy, may decide to determine the entire controversy for any of several reasons, including “to resolve a factual issue which must be determined in the proceedings; to avoid multiplicity of suits; to promote judicial efficiency; to do full justice; to avoid great expense; to afford complete relief in one action; and to overcome insufficient modes of procedure at law.”³⁹ “Of great importance is whether the facts involved in the equitable

³⁶ *Nicastro v. Rudegeair*, 2007 WL 4054757, at *2 (Del. Ch. Nov. 13, 2007) (citing WOLFE & PITTENGER § 2-4 (supp. 2006) (“It is not at all unusual for cases properly within the subject matter jurisdiction of the Court of Chancery to involve both legal and equitable claims.”)).

³⁷ *Getty Ref. & Mktg. Co. v. Park Oil, Inc.*, 385 A.2d 147, 149 (Del. Ch. 1978) (emphasis added).

³⁸ *Prestancia Mgmt. Group v. Va. Heritage Found., II LLC*, 2005 WL 1364616, at *11 (May 27, 2005) (internal quotations omitted) (quoting *Beal Bank SSB v. Lucks*, 2000 WL 710194, at *2 (Del. Ch. May 23, 2000)).

³⁹ *Getty*, 385 A.2d at 150 (internal citations omitted).

counts and in the legal counts are so intertwined as to make it undesirable or impossible to sever them.”⁴⁰

2. Whether subject matter jurisdiction exists as to Count I

Plaintiff seeks summary judgment as to Count II of her Amended Complaint, which accuses the two corporate Defendants, CMH and PCCW, of breach of contract. In opposition to that motion, Defendants Harbison, CMH, and PCCW seek to dismiss Count II for lack of subject matter jurisdiction. Plaintiff concedes that Count II, standing alone, asserts only a legal claim for which there exists an adequate remedy at law in the form of damages. Nevertheless, Plaintiff argues that because equitable jurisdiction exists over Count I, this Court should exercise its discretion to assert subject matter jurisdiction over Count II, as well, under the cleanup doctrine. Defendants dispute Plaintiff’s premise. I therefore begin my analysis by examining whether the Court of Chancery has jurisdiction over Count I.

In Count I, Plaintiff contends that Defendants fraudulently conveyed property to avoid the obligations Defendant Wes Medek undertook as part of the SSO he agreed to in connection with his divorce from Plaintiff, Sharon Medek. Specifically, Plaintiff claims that Defendants violated the UFTA, orchestrating a transfer of Wes Medek’s 50% interest in both CMH and PCCW, as well as certain real property, to Harbison under the PFMSA to avoid Wes Medek’s and Medek’s obligations under the SSO. Plaintiff also alleges Defendant Wes Medek conveyed his interests in CMH and PCCW without receiving an

⁴⁰ *Id.*

exchange of reasonably equivalent value, which resulted in his having insufficient funds to meet his obligations under the SSO.⁴¹ As relief, Plaintiff requests avoidance of the transfers, which is one of several remedies for a fraudulent transfer available to creditors under the UFTA.⁴²

Defendants argue that this Court lacks subject matter jurisdiction over either Count I or II of the Amended Complaint. Although Defendants admit that the UFTA confers on the Court of Chancery at least concurrent subject matter jurisdiction over

⁴¹ Am. Compl. ¶¶ 25-26.

⁴² Section 1307(a) of the UFTA provides in relevant part:

(a) In an action for relief against a transfer or obligation under this chapter, a creditor, subject to the limitations in § 1308 of this title, may obtain:

(1) Avoidance of the transfer or obligation to the extent necessary to satisfy the creditor's claim;

(2) An attachment or other provisional remedy against the asset transferred or other property *of the transferee* in accordance with the procedure prescribed by applicable law;

(3) Subject to applicable principles of equity and in accordance with applicable rules of civil procedure:

a. An injunction against further disposition by the debtor or a transferee, or both, of the asset transferred or of other property;

b. Appointment of a receiver to take charge of the asset transferred or of other property of the transferee; or

c. Any other relief the circumstances may require.

6 *Del. C.* § 1307 (emphasis added).

fraudulent transfer actions,⁴³ they contend that equitable jurisdiction does not necessarily follow. Defendants argue that the UFTA provides an adequate legal remedy which would be sufficient to make Plaintiff whole, *i.e.*, Plaintiff could attach the interests in question through the processes of the Superior Court. Thus, according to Defendants, Count I does not invoke this Court's equitable jurisdiction.

It is well-settled that the Court of Chancery has at least concurrent jurisdiction to hear actions that arise under the UFTA.⁴⁴ In *Getty Refining & Marketing Co. v. Park Oil, Inc.*, the plaintiff claimed that the defendant Park Oil owed a debt in connection with a sale of oil, which was guaranteed in part by defendants Frank and Shirley Jock, who were Park Oil stockholders.⁴⁵ The plaintiff also claimed that the Jock defendants fraudulently transferred real estate or conspired to transfer assets without consideration to avoid obligations under the debt and the guaranty. Those claims arose under the Uniform Fraudulent Conveyance Act, the predecessor of the UFTA. The court noted that the claims for the underlying debt and the guaranty "standing alone are claims for debt or money and ordinarily would be brought in the Superior Court," and would not provide a basis for equitable jurisdiction.⁴⁶ Because several of the claims invoked the fraudulent

⁴³ DAB at 9-10.

⁴⁴ *See Mitchell v. Wilmington Trust Co.*, 449 A.2d 1055, 1060 (Del. Ch. 1982), *aff'd*, 461 A.2d 696 (Del. 1983) (citing *Getty*, 385 A.2d 147; *E.M. Fleischmann Lumber v. Res. Corp.*, 98 A.2d 506 (Del. Ch. 1953)).

⁴⁵ 385 A.2d at 148.

⁴⁶ *Id.*

conveyance statute, however, the court in *Getty* held that it could exercise subject matter jurisdiction over not only those statutory claims, but also the entire controversy.⁴⁷ The court then proceeded to determine whether it should, in its discretion, exercise jurisdiction over the plaintiff's nonstatutory claims.⁴⁸

Here, as in *Getty*, Plaintiff, Sharon Medek, seeks in Count II repayment of several debts stemming from agreements entered into in connection with the disposition of property following the dissolution of Wes and Sharon Medek's marriage. Also like the *Getty* plaintiff, Sharon Medek seeks to enforce a guaranty of the underlying debt by a related third party, *i.e.*, PCCW. In Count I, Plaintiff alleges a violation of § 1304 of the UFTA and requests a remedy prescribed in § 1307. In fact, Plaintiff uses the language of the UFTA in Count I, alleging that "Defendant Wes Medek made [the transfers] with actual intent to hinder, delay or defraud the Plaintiff,"⁴⁹ "did not receive reasonably equivalent value in exchange for the transfers," and "was left with assets that were unreasonably small in relation to Defendant [Wes] Medek's remaining obligations to the Plaintiff."⁵⁰ Plaintiff seeks to set aside the disputed transfers to ensure she receives her due under the terms of the SSO, the Consulting Agreement, and the Guaranty. Plaintiff conceivably could accomplish this objective by causing the restoration of Defendant Wes

⁴⁷ *Id.* at 150.

⁴⁸ *Id.* at 151.

⁴⁹ Am. Compl. ¶ 24; *see* 6 *Del. C.* §1304(a)(1).

⁵⁰ Am. Compl. ¶ 25; *see* 6 *Del. C.* § 1304(a)(2).

Medek's interests in the disputed assets to him and then attaching those interests.⁵¹ This fact alone vests this Court with at least concurrent jurisdiction over Count I of the Amended Complaint.

Although the Superior Court also may have the ability to fashion a remedy at law to Plaintiff's claims, the existence of such a remedy would not deprive this Court of equitable subject matter jurisdiction over Count I of the Amended Complaint. As the Delaware Supreme Court has observed, "the mere fact that a litigant may have a remedy at law does not divest Chancery of its jurisdiction."⁵² Divestiture of jurisdiction occurs only where a concurrent remedy at law will provide full, complete, and fair relief.⁵³ Thus, the attachment remedy must not only be available, it must provide Plaintiff full, fair, and complete relief.

The record indicates that Defendant Wes Medek has no assets Plaintiff could attach at this time. Furthermore, it does not appear that attachment of the interests in CMH or PCCW or of the other financial or realty interests belonging to Defendants Harbison, CMH, or PCCW would provide full, fair, and complete relief to Plaintiff. Sharon Medek seeks to recover from Defendant Wes Medek all of the damages she

⁵¹ On February 9, 2007, the Family Court noted that Wes Medek admitted inability to meet his obligations to Plaintiff under the SSO. POB Ex. F, Civil Disposition, at 1.

⁵² *El Paso Natural Gas Co. v. TransAmerican Natural Gas Corp.*, 669 A.2d 36, 39 (Del. 1995) (quoting *Hughes Tool Co. v. Fawcett Publ'ns, Inc.*, 315 A.2d 577, 579 (Del. 1974)).

⁵³ *Id.*

suffered based on the alleged breaches of contract regarding the payment of Plaintiff's salary as a consultant, her health and dental insurance costs, and the maintenance of the life insurance policy on Wes Medek intended to fund the trust for the benefit of Plaintiff's disabled son. Plaintiff also seeks to recover all or part of those damages from certain of the other Defendants. In each case, however, the other Defendants have defenses that are not asserted by or applicable to Defendant Wes Medek. Consequently, it may be easier for Plaintiff to establish liability on the part of Wes Medek, than on the other Defendants, for the full amount of the economic harm she has suffered. If that is true, Plaintiff's ability to avoid the allegedly fraudulent transfers of a 50% interest in CMH and PCCW from Wes Medek to Defendant Harbison, so that those interests revert back to Wes Medek and then were subject to attachment in connection with the execution of a judgment against him, could provide Plaintiff more full, fair, and complete relief than attaching assets of the other Defendants. Thus, I hold as to Plaintiff's claim under the UFTA, that she does not have an adequate remedy at law in this case.

Defendants cite *Eisele v. Sussex Trust Co.* because there the Court of Chancery found the Superior Court to be the appropriate forum for considering an allegation of fraudulent conveyance under the UFTA.⁵⁴ In *Eisele*, the plaintiff sought to avoid a transfer for no consideration of a condominium from Mr. Eisele, her former husband, to a

⁵⁴ 1992 WL 163439, at *3 (Del. Ch. June 23, 1992).

company of which he was the sole shareholder.⁵⁵ The company later transferred the condominium to a third party in exchange for a purchase money mortgage.⁵⁶

This case is distinguishable from *Eisele* for several reasons. First, the equitable remedy of avoidance sought in *Eisele* was not available because setting aside the conveyance would have affected the rights of the third party purchaser who was not a party to the action.⁵⁷ Thus, no concurrent equity jurisdiction existed. Here, the equitable remedy of avoidance provided for in 6 *Del. C.* § 1307(a)(1) is available because all parties whose ownership rights in CMH and PCCW would be affected by an avoidance are parties to this litigation. In addition, the plaintiff in *Eisele* appeared to be seeking only money damages at the time of the decision, whereas Sharon Medek continuously requested the equitable remedy of avoidance.⁵⁸

Further, the *Eisele* plaintiff had secured a judgment in the Superior Court against Mr. Eisele in the amount of the debt owed more than six months before she filed her complaint in the Court of Chancery for avoidance of a fraudulent conveyance and nearly a year before Mr. Eisele filed a petition in bankruptcy.⁵⁹ Therefore, at the time she filed

⁵⁵ *Id.* at *2-3.

⁵⁶ *Id.* at *1.

⁵⁷ *Id.* at *3. Similarly, the court could not have set aside the original transfer from the former husband to the company he owned, because he also was not a party to the action. *See id.* at *3 n.3.

⁵⁸ *Id.* at *3. *See* Am. Compl. ¶ 28; PRB at 5.

⁵⁹ 1992 WL 163439, at *1.

her complaint, attachment of Mr. Eisele's assets pursuant to the Superior Court judgment was an available remedy to the plaintiff in *Eisele*. This Court determines subject matter jurisdiction from the face of the complaint as of the time it was filed.⁶⁰ Plaintiff filed the original complaint in this action on November 20, 2006, and the Amended Complaint on July 27, 2007. When Plaintiff filed the original complaint, there was no judgment against Defendant Wes Medek or any of the other Defendants. On February 9, 2007, the Family Court of the State of Delaware entered a judgment in the amount of \$29,798.82 against Defendant Wes Medek and in favor of Plaintiff.⁶¹ The Family Court judgment accounts for only part of the alleged loss suffered by Plaintiff. In addition, this Court may find Defendant Wes Medek liable to a greater extent than the other Defendants. In that event, the equitable remedy of setting aside the transfers and restoring the 50% interests in CMH and PCCW to Defendant Wes Medek would be more valuable and complete to Plaintiff than an attachment of those interests pursuant to a judgment against Defendant Harbison, for example. Thus, in the circumstances of this case, the remedy of attachment is neither full nor fair nor complete whether it is evaluated at the time of filing of the Amended Complaint or later.

Defendants also rely on *Prestancia Management Group, Inc.* as support for their position that this Court lacks subject matter jurisdiction.⁶² In *Prestancia*, the plaintiff

⁶⁰ *Prestancia*, 2005 WL 1364616, at *3.

⁶¹ Civil Disposition at 2.

⁶² 2005 WL 1364616, at *3.

asked the court for, *inter alia*, a declaratory judgment, reformation, rescission, specific performance, and a constructive trust as remedies for a real estate investment fraught with problems. The court determined that, although the defendants may have breached a contract or fraudulently induced the plaintiff to enter into an agreement to purchase an interest in the investment opportunity, the plaintiff's complaint did not implicate any equitable right or demonstrate entitlement to any equitable remedy.⁶³

This litigation presents a different situation from that in *Prestancia*. Plaintiff has not requested a litany of equitable remedies in an attempt to invoke equity jurisdiction over a purely legal matter. Instead, Plaintiff seeks an equitable remedy available to creditors in the event of a fraudulent transfer as provided in 6 *Del. C.* § 1307(a)(1), *i.e.*, the avoidance of the transfer of Defendant Wes Medek's interests in CMH and PCCW. Plaintiff has pleaded a claim under a statute that vests this Court with at least concurrent jurisdiction. Unlike the situation in *Prestancia*, Defendants have not shown that Plaintiff has asserted a purely legal claim for which adequate remedies at law exist. Indeed, the *Prestancia* plaintiff did not allege any violation of the UFTA; the plaintiff claimed that misrepresentations by the defendant induced it to enter into a real estate investment whereby interests in a development contract were transferred from the defendants to the plaintiff. In contrast, Plaintiff in this case claims Defendants orchestrated a transfer of ownership interests in two corporations to avoid obligations to Plaintiff under other agreements. Moreover, Sharon Medek alleges, and the record corroborates, that since the

⁶³ *Id.* at *7.

disputed transfers Defendant Wes Medek has been unable to satisfy his obligations as a debtor to Plaintiff under the SSO and Guaranty. Hence, this situation at least colorably satisfies the requirements of § 1304(a)(2)⁶⁴ of the UFTA and qualifies for the avoidance remedy made available in 6 *Del. C.* § 1307(a)(1).⁶⁵

⁶⁴ Section 1304(a)(2) provides in relevant part:

(a) A transfer made or obligation incurred by a debtor is fraudulent as to a creditor, whether the creditor's claim arose before or after the transfer was made or the obligation was incurred, if the debtor made the transfer or incurred the obligation:

....

(2) Without receiving a reasonably equivalent value in exchange for the transfer or obligation, and the debtor:

....

b. Intended to incur, or believed or reasonably should have believed that the debtor would incur, debts beyond the debtor's ability to pay as they became due.

6 *Del. C.* § 1304(a)(2).

⁶⁵ The avoidance remedy sought here is most analogous to the remedy of "equitable rescission" or "cancellation," which was not really being sought in the *Prestancia* case, but the court in *Prestancia* noted would give rise to equitable jurisdiction in the Court of Chancery. 2005 WL 1364616, at *5. Rather, the court held that the plaintiff there sought legal rescission, which is available in the Superior Court. That is, the Superior Court could, for example, rescind a contract by declaring it invalid "and enter an order restoring plaintiff to his original condition by awarding money or other property of which he had been deprived." *Id.* In *Prestancia*, the court described equitable estoppel or cancellation as:

a form of remedy in which, in addition to a judicial declaration that a contract is invalid and a judicial award of money or property to restore the plaintiff to his original condition is made, further relief is required. Thus, the remedy of equitable rescission typically requires

Accordingly, I hold that subject matter jurisdiction exists as to Count I, and move to the question of whether this Court should exercise its ancillary jurisdiction over Plaintiff's breach of contract claims in Count II under the cleanup doctrine.

3. Whether subject matter jurisdiction exists as to Count II

Plaintiff concedes that her breach of contract claim in Count II, standing alone, does not support equity jurisdiction, because it is a purely legal claim for which money damages are sought as a remedy.⁶⁶ This Court, however, has discretion to exercise ancillary jurisdiction over that claim to determine the entire controversy among Plaintiff and Defendants.

In addition to contesting this Court's subject matter jurisdiction over the fraudulent transfer claims in Count I, Defendants alternatively argue that, even if the Court concludes it has jurisdiction over Count I, it should decline to assert ancillary jurisdiction over Count II under the cleanup doctrine. Instead, Defendants urge the Court to sever Count II and dismiss it for lack of subject matter jurisdiction, because Counts I

that the court cause an instrument, document, obligation or other matter affecting plaintiff's rights and/or liabilities to be set aside and annulled, thus restoring plaintiff to his original position and reestablishing title or recovering possession of property.

Id. (citing *E.I. du Pont de Nemours & Co. v. HEM Research, Inc.*, 1989 WL 122053, at *3 (Del. Ch. Oct. 13, 1989)). The avoidance Plaintiff seeks in this case similarly requires more than an award of money damages in that it would restore Defendant Wes Medek's ownership of and title to a 50% interest in each of the CMH and PCCW corporations.

⁶⁶ POB at 8.

and II are not so factually intertwined as to make it impossible or undesirable to sever them.

In *Beal Bank, SSB v. Lucks*, the plaintiff bank sued various defendants based on a settlement agreement and guaranty arising from a note and mortgage.⁶⁷ The complaint alleged both legal and equitable claims under the UFTA, and the court, as here, held that the UFTA allegations supported the exercise of equity jurisdiction.⁶⁸ The plaintiff's remaining claims in *Beal Bank* were legal in nature and for money damages only, but involved the same rights of the plaintiff as creditor and implicated conduct by other defendants concerning the note and mortgage. The court retained jurisdiction over the legal claims under the cleanup doctrine because it would have been "inefficient if not impossible to sever the equitable claims . . . from the monetary claims."⁶⁹

A similar situation exists in this case. Plaintiff's claims in Count II implicate conduct by Defendant Wes Medek and the other Defendants in connection with the PFMSA challenged in Count I under the UFTA. Specifically, Count II asserts that Defendants CMH, PCCW, and Harbison breached the Consulting Agreement and refused to honor the Guaranty after Wes Medek transferred his interests in CMH and PCCW to Defendant Harbison. If this Court heard only the UFTA claims in Count I, it and the Superior Court would have to interpret the same instruments, *i.e.*, the SSO, Guaranty,

⁶⁷ 2000 WL 710194, at *1.

⁶⁸ *Id.* at *3.

⁶⁹ *Id.*

Consulting Agreement, and PFMSA, thereby creating the risk of inconsistent judgments or overlapping relief for Plaintiff. Additionally, the claims in Counts I and II require consideration of the same facts and similar issues, such as which parties are bound by the instruments in question, and what obligations do those instruments create. Because the breach of contract claims are closely intertwined with Plaintiff's fraudulent transfer claims, I am convinced that severing the UFTA claims would undermine judicial efficiency and create a risk of inconsistent judgments.

Accordingly, in the exercise of my discretion, I will retain jurisdiction over Count II under the cleanup doctrine. Therefore, I deny Defendants' motion to dismiss for lack of subject matter jurisdiction.

B. Plaintiff's Motion for Summary Judgment on Count II

1. The standard for summary judgment

Summary judgment may be granted where the moving party demonstrates that there are no genuine issues of material fact in dispute and that it is entitled to judgment as a matter of law.⁷⁰ The burden is on the moving party to show the absence of any genuine issue of material fact.⁷¹ The Court views the facts in the light most favorable to the nonmoving party.⁷² Summary judgment will be denied where the proffered evidence

⁷⁰ Ct. Ch. R. 56(c); *Burkhart v. Davies*, 602 A.2d 56, 59 (Del. 1991).

⁷¹ *Quereguan v. New Castle County*, 2004 WL 2271606, at *2 (Del. Ch. Sept. 28, 2004).

⁷² *Acro Extrusion Corp. v. Cunningham*, 810 A.2d 345, 347 (Del. 2002).

provides “a reasonable indication that a material fact is in dispute.”⁷³ Moreover, “[w]hen the issue before the Court involves the interpretation of a contract, summary judgment is appropriate only if the contract in question is unambiguous.”⁷⁴ A threshold inquiry on a motion for summary judgment in a contract dispute, therefore, becomes whether the contract contains an ambiguity.⁷⁵ “A contract provision is ambiguous only when it is fairly susceptible to two or more reasonable interpretations.”⁷⁶

2. Whether summary judgment is warranted

Plaintiff has moved for summary judgment in her favor on Count II against CMH for breach of the Consulting Agreement and against PCCW for breach of the Guaranty as to the obligations created by the SSO and the Consulting Agreement. Plaintiff also requests summary judgment as to the equitable defenses asserted by Defendants, including estoppel, laches, unclean hands, and waiver. Notwithstanding Plaintiff’s contention that no genuine issue of material fact exists, I find this controversy involves numerous disputed facts that preclude summary judgment as to the breach of contract claims and the affirmative defenses of estoppel and unclean hands. On the other hand, I

⁷³ *Ebersole v. Lowengrub*, 180 A.2d 467, 470 (Del. 1962).

⁷⁴ *United Rentals, Inc. v. RAM Holdings, Inc.*, 937 A.2d 810, 830 (Del. Ch. 2007).

⁷⁵ *Id.*

⁷⁶ *Rossi v. Ricks*, 2008 WL 3021033, at *2 (Del. Ch. Aug. 1, 2008) (citing *Concord Steel, Inc. v. Wilmington Steel Processing Co.*, 2008 WL 902406, at *3 (Del. Ch. Apr. 3, 2008)).

hold that Plaintiff is entitled to summary judgment on Defendant’s affirmative defenses of laches and waiver.

a. On Plaintiff’s claims for breach of contract

Foremost among the disputed facts is whether the parties intended the Guaranty to obligate PCCW and CMH for the debts incurred by Defendant Wes Medek pursuant to the SSO. The Guaranty defines Medek, Inc., now known as CMH, as the “Borrower.”⁷⁷ According to the terms of the Guaranty, PCCW guaranteed payment to Plaintiff of all debts and obligations of the Borrower, *i.e.*, CMH, pursuant to the SSO and Consulting Agreement;⁷⁸ Defendants argue, however, that only Defendant Wes Medek incurred debts and obligations under the SSO, not CMH or PCCW.⁷⁹ Plaintiff asks the Court to “include [Wes] Medek’s personal obligations under the SSO within the scope of the Guaranty.”⁸⁰ While Plaintiff’s construction is plausible, it does differ from the explicit language of the Guaranty. Thus, Plaintiff virtually concedes the Guaranty contains either a drafting mistake or an ambiguity.

⁷⁷ Guaranty at 1.

⁷⁸ *Id.* at 2.

⁷⁹ Defendants rely on the express language of the SSO. That document, however, obligates Defendant Wes Medek to “cause” the predecessor of PCCW to provide insurance coverage to Plaintiff and to guarantee Wes Medek’s obligations under the SSO, and to “cause” the predecessor of CMH to enter into a consulting agreement with Plaintiff for an annual salary of \$66,667. SSO §§ VII.1, X.1, XII.

⁸⁰ POB at 7.

As a result, I probably will need to consider extrinsic evidence to resolve the disputed contract interpretation issue regarding the Guaranty. In such circumstances, summary judgment is seldom appropriate.⁸¹ Likewise, where, as here, a contract reasonably might be interpreted differently from its explicit language, this Court generally will not award summary judgment.⁸²

Material issues of disputed fact also exist as to whether Plaintiff qualifies for insurance coverage under PCCW's plan. The SSO states that Plaintiff shall receive coverage "as long as [Plaintiff] qualifies for such coverage pursuant to the terms of the Plan."⁸³ The parties dispute whether Plaintiff is eligible under the Plan. On the limited record before me, I cannot resolve that issue on summary judgment.

In addition, Defendant Harbison alleges that Defendant Wes Medek admitted to an agreement with Plaintiff under which she would pursue Defendants Harbison, CMH, and PCCW instead of Defendant Wes Medek for his debts under the SSO. Harbison further alleges that the agreement included a \$150,000 payment from Defendant Wes Medek to

⁸¹ *United Rentals*, 937 A.2d at 830. See *U.S. West, Inc. v. Time Warner Inc.*, 1996 WL 307445, at *10 (Del. Ch. June 6, 1996) ("In some cases, determining whether a contract is susceptible to more than one interpretation requires an understanding of the context and business circumstances under which the language was negotiated; seemingly unequivocal language may become ambiguous when considered in conjunction with the context in which the negotiation and contracting occurred.").

⁸² *United Rentals*, 937 A.2d at 830.

⁸³ SSO at 15.

Plaintiff in partial satisfaction of those debts.⁸⁴ The parties dispute whether Wes Medek ever made such an agreement with Plaintiff or arranged such a payment. The evidence on this issue, which the Court views in the light most favorable to Defendants as the nonmoving parties, raises questions that cannot be resolved at this time, including, for example, whether the agreement, if there was one, constituted a forbearance agreement between Wes Medek and Plaintiff, and to what extent, if any, it would affect Plaintiff's right to relief in this action or any potential remedies she might receive.

Plaintiff also briefly addresses and requests summary judgment as to her claim for breach of contract based on Defendant Wes Medek's failure to maintain a life insurance policy, as required by the SSO, to fund a trust of which Plaintiff's son is a beneficiary.⁸⁵ Under the SSO, Defendant Wes Medek "agreed to maintain [the] irrevocable trust and its related life insurance policy for the benefit of the trust's named beneficiaries, including [Plaintiff's son]."⁸⁶ Disputed issues of material fact exist, however, as to whether the life insurance policies in question remain in effect.⁸⁷ Furthermore, assuming the policies

⁸⁴ Harbison Aff. ¶ 10.

⁸⁵ Am. Compl. ¶¶ 40, 46.

⁸⁶ SSO at 2.

⁸⁷ Plaintiff filed a Second Petition for Rule to Show Cause in Family Court on October 12, 2006. DAB Ex. B. In his response to that petition, dated November 27, 2006, Defendant Wes Medek stated that he expected an AIG life insurance policy to be in effect for at least two more weeks, and that an Allianz policy is currently effective. DAB Ex. C. There is no other evidence before me that the policies have lapsed and no indication of the policies' values beyond Plaintiff's unsubstantiated averments.

have lapsed, there also are disputed issues of fact regarding, for example, whether Defendants other than Wes Medek have guaranteed the life insurance policy or irrevocable trust under the Guaranty or any other instrument. Thus, even without considering Defendants' affirmative defenses, Plaintiff has not shown she is entitled to summary judgment on Count II of the Amended Complaint.

b. On Defendant's affirmative defenses to Count II

Plaintiff also seeks summary judgment in her favor on Defendants' affirmative defenses of estoppel, unclean hands, laches, and waiver. All of those defenses seem weak. The question is whether they may be resolved on summary judgment.

Defendants have the burden of proof on each of their affirmative defenses.⁸⁸ A party which has asserted an affirmative defense must come forward with specific facts showing that there is a genuine issue for trial on that defense to avoid a motion for summary judgment; she may not rely on mere allegations or denials in her pleadings.⁸⁹

⁸⁸ See Ct. Ch. R. 8(c); *Penn Mart Supermarkets, Inc. v. New Castle Shopping LLC*, 2005 WL 3502054, at *5 n.40 (Del. Ch. Dec. 15, 2005) (citing *Warwick Park Owners Ass'n, Inc. v. Sahutsky*, 2005 WL 2335485, at *4 (Del. Ch. Sept. 20, 2005)).

⁸⁹ *Tafeen v. Homestore, Inc.*, 2004 WL 1043721, at *1 (Del. Ch. Apr. 27, 2004) (“[I]t is well settled that where the opponent of summary judgment has the burden of proof at trial, he must show specific facts demonstrating a plausible ground for his claim, and cannot rely merely upon allegations in the pleadings or conclusory assertions in affidavits in order to avoid summary judgment being granted in favor of the proponent of the motion.”) (internal quotation and citation omitted). See also *Tunnell v. Stokley*, 2006 WL 452780, at *2 (Del. Ch. Feb. 15, 2006); *Tanzer v. Int'l Gen. Indus., Inc.*, 402 A.2d 382, 385-86 (Del. Ch. 1979).

As to the defenses of estoppel and unclean hands, I find that they are closely interrelated to the allegations of an undisclosed agreement between Defendant Wes Medek and Plaintiff under which Plaintiff allegedly received \$150,000 from Wes Medek and agreed to focus her efforts to recover her claimed damages on Defendants Harbison, CMH, and PCCW. For the reasons previously stated, I have concluded that there are disputed issues of material fact regarding that alleged agreement. Those issues may impact the defenses of estoppel and unclean hands, as well. Accordingly, I deny Plaintiff's motion for summary judgment as to each of those affirmative defenses.⁹⁰

I conclude Plaintiff is entitled to summary judgment, however, on Defendants' affirmative defenses of laches and waiver. Laches requires a defendant to prove both unreasonable delay on the part of a plaintiff in bringing suit and prejudice to the defendant as a result.⁹¹ The evidence shows Plaintiff suffered losses beginning with the

⁹⁰ In her reply brief, Plaintiff argues that Defendants waived all of the asserted affirmative defenses under paragraphs 8 and 9 of the Guaranty. PRB at 12. Paragraph 8 purports to waive defenses based on any delay in Plaintiff's pursuing her rights with respect to any indebtedness. Paragraph 9 states in pertinent part, "Guarantor [PCCW] unconditionally and irrevocably waives all defenses which, under principles of guaranty or surety ship [sic] law, may otherwise operate to impair or diminish the liability of Guarantor hereunder." Based on the belated assertion of this argument in the summary judgment briefing and the muddled state of the record regarding the alleged agreement between Defendant Wes Medek and Plaintiff, I do not consider it an efficient use of judicial resources to attempt to evaluate the applicability of paragraphs 8 and 9 to Defendants' affirmative defenses or to the various Defendants in the context of Plaintiff's pending motion. Thus, for purposes of this opinion, I have not addressed the merits of that aspect of Plaintiff's argument.

⁹¹ *Hudak v. Procek*, 727 A.2d 841, 843 (Del. 1999).

termination of her salary and insurance coverage at the end of August 2006, and she filed her original complaint on November 20, 2006. Defendants have proffered no explanation of how this could constitute unreasonable delay.

Similarly, Defendants have adduced no evidence that any of them suffered prejudice or a detrimental change in position as a result of the timing of Plaintiff's enforcement action. Apart from referring to their subject matter jurisdiction argument, Defendants' entire response to the motion for summary judgment on laches consists of the following statement: "Any determination on the propriety of Defendants' laches defense should be reserved as . . . insufficient discovery has been conducted to date to reach such a determination."⁹² This case has been pending for almost two years. In addition, Defendants enjoyed a generous three-month briefing schedule to enable them to complete any discovery germane to the motion for summary judgment. Furthermore, on the issue of prejudice, Defendants presumably have had that information from the outset and have failed to explain why they would have needed any discovery to meet their burden in that regard. I, therefore, hold that Defendants have not shown the existence of any disputed issues of material fact on their defense of laches, and summarily reject that defense.

I reach the same conclusion on the defense of waiver. To prove waiver, Defendants must prove Plaintiff voluntarily and intentionally relinquished a known

⁹² DAB at 16-17.

right.⁹³ To prove waiver, Defendants would have to show that Plaintiff knew that Defendants Wes Medek and CMH were going to default on their obligations under the SSO and the Consulting Agreement, and that Plaintiff knowingly relinquished her right to try to enforce those rights directly or through the Guaranty. Defendants proffered no specific facts to meet their burden to present a prima facie showing of such a waiver.⁹⁴ Thus, Plaintiff also is entitled to partial summary judgment on Defendants' waiver defense.

III. CONCLUSION

For the reasons stated, Defendants' motion to dismiss is denied, and Plaintiff's motion for partial summary judgment is granted in part and denied in part. In particular, I grant summary judgment in favor of Plaintiff on the affirmative defenses of laches and waiver. In all other respects, Plaintiff's motion is denied.

IT IS SO ORDERED.

⁹³ *Realty Growth Investors v. Council of Unit Owners*, 453 A.2d 450, 456 (Del. 1982).

⁹⁴ Nor have Defendants offered any argument as to why their laches and waiver defenses would not be precluded by paragraphs 8 and 9 of the Guaranty, at least as to PCCW.