IN THE COURT OF CHANCERY OF THE STATE OF DELAWARE

THE THOMAS AND AGNES CARVEL FOUNDATION, Petitioner, v. PAMELA CARVEL, individually and as Ancillary Administratrix with Will Annexed of Agnes Carvel, Respondent.	)	Civil Action No. 3185-VCP

MEMORANDUM OPINION

Submitted: April 16, 2008
Decided: September 30, 2008

W. Donald Sparks, II, Esquire, Chad M. Shandler, Esquire, RICHARDS, LAYTON & FINGER, P.A., Wilmington, Delaware; Steven J. Fink, Esquire, Alison Swap, Esquire, ORRICK, HERRINGTON & SUTCLIFFE LLP, New York, New York, *Attorneys for Petitioner*

Pamela Carvel, London, England, *Pro Se Respondent*

PARSONS, Vice Chancellor.

This action involves a long-running dispute over the estate of Thomas and Agnes Carvel, founders of the well-known soft serve ice cream company of the same name. Respondent, Pamela Carvel ("Carvel"), is the consanguine niece of Thomas Carvel and the Delaware ancillary administrator of Agnes's estate (the "Estate").[1] Petitioner, The Thomas and Agnes Carvel Foundation (the "Foundation"), is the residuary beneficiary of the Estate.

In this action, the Foundation seeks the removal of Carvel as Delaware ancillary administrator, claiming she is unfit as a fiduciary and has neglected her statutory duties. The Foundation does not seek to replace Carvel, asserting there are no Delaware assets, and therefore no need for a Delaware ancillary administrator. Carvel contends the Foundation lacks standing to seek her removal and that its petition is time-barred by laches.

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[1] Carvel's administration is ancillary to the administration at the place of the decedent's domicile. *Black's Law Dictionary* 47 (8th ed. 2004). A domiciliary administration is the administration of an estate in the place where the decedent was last domiciled. *Id.* In this case, the domiciliary jurisdiction for Agnes's Estate appears to be London, because that is where Agnes lived for several years before her death and where she died. "The domiciliary representative of a decedent has title to all the personal estate regardless of where the same may be situated. Such a representative however has no authority to sue or enforce his [or her] rights outside the jurisdiction of his [or her] appointment . . . ." *In re Brown's Estate*, 52 A.2d 387, 391 (Del. Orphans' Ct. 1944). Thus, a decedent's representative may commence "ancillary administration" to administer an estate's assets located somewhere other than the decedent's domicile for the purposes of marshalling assets and paying debts in the ancillary jurisdiction. *See Black's Law Dictionary* at 47. Delaware is an ancillary jurisdiction for the Estate.

The Foundation has moved for summary judgment on its application to remove Carvel as ancillary administrator.[2] Carvel opposes summary judgment and contends she needs further discovery to respond to the Foundation's motion. Additionally, Carvel has filed, among other things, a motion for an intermediate accounting to ascertain the value of the Delaware assets in the Estate.

For the reasons stated in this opinion, I grant the Foundation's motion for summary judgment and order Carvel removed as ancillary administrator, and deny Carvel's motion for an intermediate accounting and other relief.

I. FACTUAL BACKGROUND

The surrounding facts and the parties' interactions span over twenty years and involve litigation in a number of jurisdictions. For purposes of this opinion, I recite only those facts pertinent to the issues before this Court.

A. The Parties

Petitioner, The Thomas and Agnes Carvel Foundation, is a New York not-for-profit corporation created by Thomas and Agnes Carvel in 1976.[3] The Foundation makes grants to charitable organizations providing health and education services for children and adolescents in Westchester County, New York.[4]

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2 For the purpose of addressing the removal issue, I assume, without deciding, that at least some Delaware assets exist.

3 Landy Aff. ¶ 2.

4 *Id.*

Pamela Carvel is Thomas and Agnes Carvel's niece.[5] Until her death in 1998, Agnes Carvel lived with and was cared for by Carvel. In this action, Respondent Carvel is proceeding *pro se*.

B. The Wills and Agreement

Thomas and Agnes Carvel published mutual wills in 1988 (the "1988 Wills").[6] Each left his or her estate in trust to the survivor for life with the residue to the Foundation.[7] Thomas and Agnes also entered into a reciprocal agreement in 1988 in which they each contracted not to make gratuitous transfers of property or change the provisions of their wills (the "Agreement").[8]

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5 Response ¶ 46. "Response" refers to the document Carvel filed on October 12, 2007, in response to the petition for her removal as ancillary administrator. "Nov. RABSJ" refers to Respondent Carvel's answer in opposition to the Foundation's motion for summary judgment, filed Nov. 27, 2007. "ROBAA" refers to Carvel's Opening Brief in Support of Cross-Motion to Adjudicate Intermediate Accounting and to Appoint a Delaware Receiver, filed Jan. 3, 2008. "Mar. RABSJ" refers to Carvel's answering brief in opposition to petitioner's motion for summary judgment, filed Mar. 3, 2008.

6 Fink I Aff. ¶ 3, Ex. 10 ("Sur. Ct. Decision") at 4. "Fink I Aff." refers to the December 31, 2007 affidavit of Steven J. Fink; "Fink II Aff." refers to Fink's January 31, 2008 affidavit. "Sur. Ct. Decision" refers to the April 1, 2002 decision of the Surrogate's Court of the State of New York for Westchester County, described *infra* Part I.C.

7 Sur. Ct. Decision at 2, 4.

8 *Id.*

Thomas Carvel died in October 1990.[9] His 1988 Will was admitted to probate in New York.[10] Carvel was appointed one of seven executors of Thomas's estate.[11] In 1990, Agnes executed a will that sought to replicate the terms of her 1988 Will, which was believed to have been lost.[12] In 1991, an inter vivos trust was created for Agnes (the "1991 Trust") to which she transferred substantial assets.[13] On July 7, 1995, Agnes published a new will that deviated from her 1988 Will in that it named the Carvel Foundation, Inc., a Florida corporation ("Carvel-Florida"), rather than the Foundation, as residual beneficiary (the "1995 Will").[14] Pamela Carvel was a founding member of Carvel-Florida.[15] Earlier in 1995, Carvel and Agnes had moved to London, England, where Agnes died in August 1998.[16]

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9 Fink I Aff. ¶ 3; Sur. Ct. Decision at 2. Carvel alleges Thomas's death was procured by Foundation members as part of a conspiracy to control the Carvels' assets. Response ¶ 6. She also accuses the Foundation of deliberately procuring the death of Agnes. ROBAA ¶ 33.

10 Sur. Ct. Decision at 5.

11 Following Agnes's death, and while proceedings to have Carvel removed as a co-executrix of Thomas's estate were pending, Carvel resigned from that position. Fink I Aff. ¶ 17, Ex. 19 at 8.

12 Fink I Aff. ¶ 5, Ex. 4.

13 Sur. Ct. Decision at 5.

14 Fink I Aff. ¶ 6, Exs. 5, 6.

15 Fink I Aff. ¶ 6, Ex. 6.

16 Fink I Aff. ¶ 7.

Shortly after Agnes's death, Carvel submitted the 1995 Will for probate to the High Court of Justice, Chancery Division, in London.[17] The High Court named Carvel as the sole personal representative of the Estate of Agnes Carvel on October 2, 1998.[18]

C. Prior Litigation Between the Parties

In August 1998, the Foundation commenced two proceedings in the Surrogate's Court of the State of New York for Westchester County (the "Surrogate's Court") against the Estate and Carvel to enforce the Agreement.[19] In an April 1, 2002 decision, the Surrogate's Court held the Agreement was valid and enforceable by the Foundation as a third party beneficiary.[20] The Surrogate's Court directed the fiduciaries of the Estate to perform the contract of the decedent and held that, under the contract, the Foundation's "remedy is to receive the residue of the Estate."[21] In that respect, the Foundation effectively was to replace Carvel-Florida, the residual beneficiary provided for in the 1995 Will. The Estate's ancillary administrator in New York was also directed to hold certain assets of the Estate subject to payment of creditors and expenses.[22]

In February 2003, Carvel petitioned the New Castle County Register of Wills for authority to act as the ancillary personal representative, attaching Agnes's 1995 Will to

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17 *Id.*

18 *Id.* ¶ 8.

19 *Id.* ¶¶ 9-10.

20 Sur. Ct. Decision at 20-22.

21 *Id*.

22 *Id*. at 22.

her petition.[23] Carvel's petition did not list the Foundation as a beneficiary or mention the proceeding in the Surrogate's Court. The Register of Wills granted Carvel's petition.[24]

Carvel, in her personal capacity, brought a separate action in June 2003 in the Chancery Division of the High Court in England against herself, in her capacity as executor of the Estate, claiming debts and expenses against the Estate totaling more than £6 million plus interest.[25] The High Court ordered that Carvel-Florida be substituted as a defendant.[26] Carvel-Florida then admitted liability and was ordered to pay Carvel £8,085,095 from the Estate.[27] In May 2005, Carvel had the High Court judgment domesticated in the Florida Circuit Court for the County of Broward.[28] As with her petition to the Register of Wills in Delaware, Carvel did not provide any notice to the Foundation of the action she took in Florida.[29] In August 2005, Carvel also registered the domestication order with the Supreme Court of New York for Nassau County, which later issued a writ of execution upon the Estate.[30] In December 2005, the Foundation

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23 Fink I Aff. ¶ 12, Ex. 13.

24 Fink I Aff. ¶ 12, Ex. 14.

25 Fink I Aff. ¶ 19, Ex. 8 ("High Ct. J.") ¶ 11.

26 High Ct. J. ¶ 12.

27 *Id.* Carvel-Florida's admission of liability was signed by Carvel's mother. *Id.*

28 Fink I Aff. ¶ 20.

29 High Ct. J. ¶ 14.

30 *Id.* ¶ 15.

intervened in the Florida proceedings, and the domestication order was vacated in January 2006.[31]

Back in June 2004, the Surrogate's Court denied Carvel's application to receive funds from Agnes's New York Estate for the Estate's Delaware ancillary administration expenses.[32] The court further held that Carvel should look first to the 1991 Trust for the funds and that it would defer to the Florida court, which apparently had jurisdiction over the Trust, regarding the reasonableness of any requests for distributions.[33]

In 2007, the Foundation brought suit in the High Court in England to have Carvel removed as personal representative of Agnes's Estate.[34] In June 2007, following a trial, the High Court removed Carvel as personal representative and overturned the previous judgment against the Estate.[35] The Foundation then brought this action in August 2007.

D. Procedural History of This Action

The Foundation petitioned to remove Carvel as Delaware ancillary administrator on August 27, 2007. Carvel filed her answer and notified the Court she would proceed *pro se* in early October 2007. Along with her answer, Carvel filed a Motion to Adjudicate Intermediate Accounting of Ancillary Administrator and to Appoint a Receiver to hold all Estate Assets now in Plaintiff's Hand ("Motion for Intermediate

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31 Fink I Aff. ¶ 22, Ex. 23 ("Fla. Ct. Order").

32 Response ¶ 62, Ex. 3.

33 *Id.*

34 High Ct. J. ¶ 1.

35 *Id.* ¶¶ 55, 58.

Accounting"). On October 25, 2007, the Foundation moved for summary judgment. On November 27, 2007, in conjunction with her opposition to that motion, Carvel filed a motion to dismiss or stay this proceeding and a supporting affidavit.

In a teleconference with this Court on November 29, 2007, the parties agreed on a schedule for briefing the pending motions and for filing any additional motions. That schedule is reflected in a stipulated order entered on December 10, 2007.

On March 3, 2008, Carvel filed her Answering Brief in Opposition to Plaintiffs' Motion for Summary Judgment for Removal Ancillary Administrator. She also filed an additional Motion to Compel Discovery and for Payment of Litigation Costs ("Motion for Litigation Expenses"). In a letter to the Court dated March 25, 2008, the Foundation objected to Carvel's motion, arguing that it "directly contravenes the Revised Scheduling Order which directed Ms. Carvel to file a letter with the Court on or before December 31, 2007 identifying all other issues that required briefing."

In a teleconference on April 16, 2008, I denied Carvel's Motion to Dismiss or Stay, reserved decision on the Motion for Summary Judgment and the issue of Carvel's standing to pursue her Motion for Intermediate Accounting, and stayed Carvel's Motion for Litigation Expenses, pending resolution of the matters taken under advisement.

This is the Court's decision on the Foundation's Motion for Summary Judgment and Carvel's Motion for Intermediate Accounting.

E. Parties' Contentions

The Foundation seeks summary judgment on its petition to remove Carvel as Delaware ancillary administrator. It contends that this Court must remove Carvel as

ancillary administrator under 12 *Del. C.* § 1572, as well as principles of comity and Full Faith and Credit. Additionally, the Foundation seeks the removal of Carvel pursuant to 12 *Del. C.* § 1541(a), because she breached her fiduciary duties as administrator of the Estate.

Carvel opposes the motion for summary judgment based, in part, on Rule 56(f), claiming she needs discovery before she can justify her opposition. Carvel contends the Foundation lacks standing to seek her removal, because no tribunal has found those acting on behalf of the Foundation to be legitimate Foundation members. Carvel further asserts the Foundation's petition is time-barred by laches,[36] because the Foundation knew of her position as Delaware ancillary administrator since at least 2004 and did not seek to remove her until August 2007.

Carvel also seeks relief of her own in the form of an intermediate accounting of the Estate,[37] arguing that she is "an interested party" pursuant to Court of Chancery Rule 115. The Foundation responds that Carvel lacks standing to seek such an accounting, because she is only a member of the Foundation, and not a beneficiary.

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[36] Carvel does not specifically mention the equitable defense of laches, but the Court understands from the papers she submitted *pro se* that she asserts that defense.

[37] Although Carvel's motion seeks an "intermediate accounting of the ancillary administrator," her supporting affidavit suggests otherwise. I, therefore, assume she seeks an accounting of the Estate to the extent it includes real estate or personal property of Agnes Carvel located in Delaware, rather than an accounting of herself, as the ancillary administrator. *See* 12 *Del. C.* § 1307.

II. ANALYSIS

A. Foundation's Motion for Summary Judgment

1. The standard

Summary judgment should be granted where there is no genuine issue of material fact and the moving party is entitled to judgment as a matter of law.[38] "[S]ummary judgment may not be granted when the record indicates a material fact is in dispute or if it seems desirable to inquire more thoroughly into the facts in order to clarify the application of law to the circumstances."[39] On a motion for summary judgment, the court must view the facts in a light most favorable to the nonmoving party.[40] The nonmoving party "may not rest upon mere allegations or denials of the adverse party's pleading," but rather, "must set forth specific facts showing that there is a genuine issue for trial."[41] Under Rule 56(f), the court may deny summary judgment or order a continuance, if the nonmoving party is unable for legitimate reasons to present by affidavit facts essential to justify its opposition.[42]

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

39 *Pathmark Stores v. 3821 Assocs.*, 663 A.2d 1189, 1191 (Del. Ch. 1995).

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

41 Ct. Ch. R. 56(e).

42 Ct. Ch. R. 56(f); *Kier Const., Ltd. v. Raytheon Co.*, 2002 WL 31583266, at *1 (Del. Ch. Nov. 4, 2002).

2. Does the Foundation have standing to seek Carvel's removal pursuant to 12 *Del. C.* § 1541(a)?

To obtain the removal of an administrator pursuant to 12 *Del. C.* § 1541, the petitioner first must establish its standing to seek removal.[43] Standing refers to a party's right to "invoke the jurisdiction of a court to enforce a claim or redress a grievance."[44] In determining standing, a court focuses on the question of who is entitled to mount a legal challenge, as opposed to the merits of the subject matter of the controversy.[45] The standing requirements are:

> (1) the plaintiff must have suffered an injury in fact – an invasion of a legally protected interest which is (a) concrete and particularized and (b) actual or imminent, not conjectural or hypothetical; (2) there must be a causal connection between the injury and the conduct complained of – the injury has to be fairly traceable to the challenged action of the defendant and not the result of the independent action of some third party not before the court; and (3) it must be likely, as opposed to merely speculative, that the injury will be redressed by a favorable decision.[46]

This Court will provide relief only to a party who has a "legally cognizable interest in a controversy."[47]

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43 *Howard Hughes Med. Inst. v. Lummis*, 1978 WL 4989, at *3 (Del. Ch. Feb. 16, 1978), *aff'd*, 399 A.2d 533 (Del. 1979).

44 *Tunnell v. Stokley*, 2006 WL 452780, at *2 (Del. Ch. Feb. 15, 2006).

45 *Id.*

46 *Dover Historical Soc'y v. City of Dover Planning Comm'n*, 838 A.2d 1003, 1110 (Del. 2003).

47 *Tunnell*, 2006 WL 452780, at *2.

Carvel argues the Foundation lacks standing, because its legitimacy has never been determined by any court.[48] The Foundation counters that several courts have recognized the Foundation's right to pursue claims such as this one. The Foundation further maintains that Carvel should be estopped from making her standing argument, because it has been fully adjudicated in other fora.

Issue preclusion, or collateral estoppel, provides that "where a question of fact essential to the judgment is litigated and determined by a valid and final judgment, the determination is conclusive between the same parties in a subsequent case on a different cause of action."[49] To prevent a party from re-litigating an issue, a litigant must show that: "(1) the issue sought to be precluded [is] the same as that involved in the prior action; (2) the issue [was] actually litigated; (3) [the issue was] determined by a final and valid judgment; and (4) the determination [was] essential to the prior judgment."[50] The Restatement (Second) of Judgments[51] identifies the following exceptions where the doctrine of issue preclusion would not apply:

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48 According to Carvel, she is the sole legitimate member of the Foundation pursuant to an adjudication by the New York State Supreme Court on August 30, 1999. She further asserts that the current Foundation members are "usurpers," who have conspired to assume control of Carvel assets. Response at ¶¶ 52-65.

49 *Columbia Cas. Co. v. Playtex FP, Inc.*, 584 A.2d 1214, 1216 (Del. 1991).

50 *Acierno v. New Castle County*, 679 A.2d 455, 459 (Del. 1996).

51 The Delaware courts regularly cite the Restatement (Second) of Judgments with approval. *See, e.g., Advanced Litig., LLC v. Herzka*, 2006 WL 2338044, at *7 (Del. Ch. Aug. 10, 2006); *Orloff v. Shulman*, 2005 WL 3272355, at *7 (Del. Ch. Nov. 23, 2005).

> (1) The party against whom preclusion is sought could not, as a matter of law, have obtained review of the judgment in the initial action; or
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> (2) The issue is one of law and (a) the two actions involve claims that are substantially unrelated, or (b) a new determination is warranted in order to take account of an intervening change in the applicable legal context or otherwise to avoid inequitable administration of the laws; or
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> (3) A new determination of the issue is warranted by differences in the quality or extensiveness of the procedures followed in the two courts or by factors relating to the allocation of jurisdiction between them; or
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> (4) The party against whom preclusion is sought had a significantly heavier burden of persuasion with respect to the issue in the initial action than in the subsequent action; the burden has shifted to his adversary; or the adversary has a significantly heavier burden than he had in the first action; or
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> (5) There is a clear and convincing need for a new determination of the issue (a) because of the potential adverse impact of the determination on the public interest or the interests of persons not themselves parties in the initial action, (b) because it was not sufficiently foreseeable at the time of the initial action that the issue would arise in the context of a subsequent action, or (c) because the party sought to be precluded, as a result of the conduct of his adversary or other special circumstances, did not have an adequate opportunity or incentive to obtain a full and fair adjudication in the initial action.[52]

Absent one of these situations, courts generally preclude a party from re-litigating an issue it already litigated in the past.

In 1995, the Supreme Court of New York, County of Westchester granted a motion for injunctive relief by the Foundation, and enjoined Carvel from using the

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[52] Restatement (Second) of Judgments § 28 (1982).

Foundation's letterhead to communicate with third parties.[53] The court there referred to the Foundation as "a presumably legitimate entity" and stated that Carvel had "not shown why the existing Foundation should be disregarded, nor, why she ha[d] the sole authority to represent it by use of its letterhead in communicating with third parties."[54] I do not consider the observations of the New York Court conclusive on the issue of standing, however, because a finding of reasonable probability of success at the preliminary injunction stage is not a final judgment of the court on the merits.[55]

The other decisions relied on by the Foundation, however, do establish its standing. In its April 1, 2002 decision, the Surrogate's Court held the Agreement entered into by Thomas and Agnes was both valid and enforceable by the Foundation as a third party beneficiary.[56] The Surrogate's Court directed the fiduciaries of the Estate to perform the contract of Agnes and held that, under the contract, the Foundation's "remedy is to receive the residue of the Estate."[57] The Estate's ancillary administrator in

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53 Letter from Jameson A.L. Tweedie, Esq., to this Court (Dec. 20, 2007), Ex. A at 1.

54 *Id.*

55 *See Siegman for Siegman v. Columbia Pictures*, 1993 WL 10969, at *5 (Del. Ch. Jan 15, 1993); *see also Univ. of Texas v. Camenisch*, 451 U.S. 390, 395 (1981) ("The purpose of a preliminary injunction is merely to preserve the relative positions of the parties until a trial on the merits can be held. Given this limited purpose, and given the haste that is often necessary if those positions are to be preserved, a preliminary injunction is customarily granted on the basis of procedures that are less formal and evidence that is less complete than in a trial on the merits.").

56 Sur. Ct. Decision at 20-22.

57 *Id*.

New York was also directed to hold certain assets of the Estate subject to payment of creditors and expenses.[58] In the 2006 Broward County Order, the court stated that, "the Foundation was an interested party in both the proceedings before the High Court in London and before this Court."[59] Similarly, the High Court of Justice, Chancery Division recognized the Foundation's right to notice of the High Court Judgment as a result of its being a beneficiary of the Estate.[60]

The Florida Court specifically remarked that Carvel previously had litigated the Foundation's legitimacy and was precluded from doing so again in the Florida proceedings: Carvel "participated in those [earlier] proceedings and either she failed to raise the argument of fraud or, if she did raise this argument she did not prevail either at trial or on appeal."[61] Therefore, Carvel is barred by the doctrine of issue preclusion from re-litigating the question of the Foundation's legitimacy or its status as a beneficiary of the Estate in this case, as those issues already were decided in the Foundation's favor in prior litigation between these parties.

The evidence presented by Carvel and the reasonable inferences from that evidence are not sufficient to prove any of the exceptions to issue preclusion apply here. The exception most nearly applicable to these facts is Restatement (Second) of

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58 *Id*.

59 Fla. Ct. Order at 5.

60 High Ct. J. ¶¶ 21-42.

61 Fla. Ct. Order at 4.

Judgments § 28(5),[62] but Carvel has not shown facts that would bring that exception into play. There is no need under § 28(5)(b) for a new determination as to the Foundation's legitimacy, because Carvel has not shown any reason to believe it was not sufficiently foreseeable at the time of the initial action that the issue of the Foundation's legitimacy would arise in the context of a subsequent action. Likewise, as to § 28(5)(c), Carvel has failed to show that she did not have an adequate opportunity or incentive to obtain a full and fair adjudication in the initial action. Carvel claims she is seriously disadvantaged in this litigation, because she has been unable to obtain funds from the Estate to pursue it vigorously. Yet, Carvel was represented by an attorney in the first litigation and she had the same incentive to pursue all claims then. Thus, I conclude that Carvel is barred from re-litigating the Foundation's legitimacy or status as a beneficiary of the Estate, and has failed to allege sufficient facts to create any question as to the Foundation's standing to seek her removal as ancillary administrator of the Estate in Delaware.

3. Is the Foundation's petition barred by laches?

As a further defense, Carvel contends this action is time-barred under the equitable doctrine of laches. I disagree.

The doctrine of laches may bar an action,

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[62] The relevant portion of the exception described in § 28(5) applies where: "There is a clear and convincing need for a new determination of the issue . . . (b) because it was not sufficiently foreseeable at the time of the initial action that the issue would arise in the context of a subsequent action, or (c) because the party sought to be precluded, as a result of the conduct of his adversary or other special circumstances, did not have an adequate opportunity or incentive to obtain a full and fair adjudication in the initial action."

> if the defendant carries the burden of persuasion that two conditions have been satisfied: (1) the plaintiff waited an unreasonable length of time before bringing the suit and (2) the delay unfairly prejudices the defendant. What constitutes unreasonable delay and prejudice are questions of fact that depend upon the totality of the circumstances.[63]

"Knowledge and unreasonable delay are essential elements of the defense of laches," but there is no rigid rule to determine what constitutes an unreasonable delay.[64] Rather, it is "a question of fact dependent largely upon the particular circumstances," where "[c]hange of position on the part of those affected by nonaction, and the intervention of rights are factors of supreme importance."[65] A defendant pursuing a defense of laches must also show that she was "prejudiced by the plaintiffs' failure to assert their claims in a timely manner."[66]

Carvel avers that the Foundation has long known the facts alleged in this action but delayed pursuing its accusations against her until she asserted her claims to recover Agnes Carvel's assets.[67] The Foundation maintains that it acted promptly after discovering Carvel's alleged breaches of fiduciary duties and receiving the High Court's June 2007 decision removing Carvel as personal representative of the Estate.[68]

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63 *Hudak v. Procek*, 806 A.2d 140, 153 (Del. 2002).

64 *Fed. United Corp. v. Havender*, 11 A.2d 331, 343 (Del. 1940).

65 *Id.*

66 *Steele v. Ratledge*, 2002 WL 31260990, at *2 (Del. Ch. Sept. 20, 2002).

67 Mar. RABSJ ¶¶ 35-41.

68 PRB at 4-7. "PRB" refers to the Foundation's reply brief in support of its motion for summary judgment.

The Foundation filed this action to remove Carvel as Delaware ancillary administrator on August 27, 2007. Denying any unreasonable delay, the Foundation contends that Carvel did not notify it of her appointment in 2003 as Delaware ancillary administrator and that until 2007 she took virtually no action in Delaware that would have given the Foundation a reason to seek her removal. Although Carvel failed to identify the Foundation as a beneficiary when she opened the ancillary administration in February 2003, the Foundation was put on notice of her position as ancillary administrator a year later. In 2004, Carvel made an Application to Receive Funds for Delaware Ancillary Administration in the New York Surrogate's Court in litigation to which the Foundation was a party.[69] The Foundation, therefore, knew about Carvel's position in Delaware in 2004. It was not until mid-2007, however, that the Foundation had reason to seek her removal. At that time, Carvel used her position to file three lawsuits in the United States District Court for the District of Delaware, including one against three of the Foundation's directors, a second against the Estate's New York ancillary administrator,[70] and a third against Carvel Corporation. In these circumstances, the Foundation's failure to file this action until August 2007 does not constitute an unreasonable delay, especially since Carvel did not produce any evidence that she

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69 Application to Receive Funds at 1. The Surrogate's Court denied that application. *Id.*

70 Carvel's suit against the New York ancillary administrator has been dismissed for lack of personal jurisdiction. *Carvel ex rel. Carvel v. Ross*, 2008 WL 2794806, at *1 (D. Del. July 17, 2008).

provided notice to the Foundation when she made the initial filing with the Register of Wills or any of her other filings before the commencement of this action.

Moreover, even if the Foundation's delay could be considered unreasonable, Carvel has not shown that it unfairly prejudiced her. She simply asserts that the Foundation knew of these claims and failed to take timely action regarding them. Such conclusory statements are not sufficient to demonstrate material prejudice. Therefore, laches does not bar the Foundation from pursuing this action.

4. Should Carvel be removed as Delaware ancillary administrator?

The Foundation advances two reasons for removing Carvel as Delaware ancillary administrator. First, it contends that prior decisions in other courts holding that Carvel breached her fiduciary duties are binding on this Court and warrant her removal. Second, the Foundation argues that Carvel must be removed, because she has breached her statutory duties under Delaware law.

In response, Carvel first denies that the previous decisions relied upon by the Foundation are binding on this Court as they resulted from improper procedures and judicial bribery.[71] In regard to the claim that she neglected her duties, Carvel maintains that her lack of activity resulted mainly from her inability to ascertain the value of the Estate's Delaware assets.

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[71] Carvel alleges, for example, that Westchester County Surrogate Anthony Scarpino who rendered the 2002 decision regarding the Agreement received a "loan" from a bank owned by Foundation "members" before rendering a favorable decision. According to Carvel, these allegations are being investigated by the Department of Justice. *See* Mar. RABSJ ¶¶ 42-48.

a. Do the holdings of other courts that Carvel has breached her duties to the Estate justify removing her here?

Under Delaware law, a local personal representative may be bound by a prior adjudication elsewhere. Specifically, 12 *Del. C.* § 1572 states that "[i]n the absence of fraud or collusion, an adjudication rendered in the domiciliary jurisdiction or any ancillary jurisdiction in favor of or against any personal representative of the estate is as binding on the local personal representative as if the representative were a party to the adjudication."

Moreover, this Court also may be bound by prior decisions elsewhere because of the Full Faith and Credit Clause of the United States Constitution and principles of comity. Under the Full Faith and Credit Clause, "Full Faith and Credit shall be given in each state to the public Acts, Records, and judicial Proceedings of every other State."[72] As Vice Chancellor Lamb recently observed:

> This court gives the same preclusive effect to the judgment of another state or federal court as the original court would give. Full faith and credit requires a federal court to apply state law on issue preclusion when the original decision is in state court. While not expressly constitutionally mandated, this court adopts the same policy.[73]

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72 U.S. Const. art. IV, § 1.

73 *West Coast Mgmt. & Capital, LLC v. Carrier Access*, 914 A.2d 636, 642-43 (Del. Ch. 2006).

It has been noted, though, that this Court cannot give greater effect under either the Full Faith and Credit Clause or principles of comity to a judgment of another state than would the courts of that state.[74]

Generally, judgments of a foreign country are recognized under principles of comity.[75] "Comity permits one state to give effect to the laws of a sister state, not out of obligation, but out of respect and deference."[76] "[F]oreign judgments are ordinarily entitled to the same respect in this country as judgments of the courts of the states of the union."[77] As with the judgments of our domestic courts, "a foreign judgment is to be given only such binding effect as would be accorded to it by courts of the jurisdiction rendering the judgment."[78]

The Foundation contends the decisions of the High Court, the Surrogate's Court, and other jurisdictions are binding on Carvel here pursuant to 12 *Del. C.* § 1572, the Full Faith and Credit Clause, and principles of comity. Additionally, those decisions, according to the Foundation, provide ample basis to remove Carvel as ancillary administrator. Carvel urges the Court not to give binding effect to those decisions, because they resulted from improper procedures and judicial bribery.

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74 *B.F. Rich Co. v. Gray*, 2006 WL 3337163, at *8 (Del. Ch. 2006), *rev'd on other grounds*, 933 A.2d 1231 (Del. 2007).

75 *Bata v. Bata*, 163 A.2d 493, 504 (Del. 1960).

76 *Columbia Cas. Co. v. Playtex FP, Inc.*, 584 A.2d 1214, 1218 (Del. 1991).

77 *Bata*, 163 A.2d at 505.

78 *Id.* at 504.

The Foundation first relies on the Surrogate's Court's 1995 decision accepting Carvel's resignation as executrix of Thomas's Estate as showing that Carvel is unfit as a fiduciary. Although the Surrogate's Court accepted Carvel's resignation, the court also noted that her "conduct as a fiduciary and her campaign to thwart the legitimate processes of estate administration present reasonable grounds to summarily remove her."[79] Still, this prior decision is not binding here, because it concerns Thomas's Estate and not Agnes's Estate, which is involved in this action, and because the Surrogate's Court's statement was not essential to any judgment, since Carvel resigned.

Next, Petitioner cites the 2006 Florida Circuit Court order vacating the domesticated judgment Carvel had obtained. The Florida court found that there was "strong evidence of fraud upon the court perpetrated by Petitioner [Carvel] in both the proceedings before the High Court and this [Florida] Court. This Court is further of the opinion that Petitioner, by proceeding as she has, is attempting to circumvent the decision of the Westchester County Surrogate's Court."[80] This decision in Florida is binding on this Court as it involves the same parties and the same estate. Further, Carvel appealed the Florida court's order, and it was affirmed.[81]

In addition, the High Court in 2007 removed Carvel as personal representative of Agnes's Estate. The court found that "Pamela does not understand her responsibilities,

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79 Fink I Aff. ¶ 17, Ex. 19 at 8.

80 Fla. Ct. Order at 5.

81 *See* Fink I Aff. ¶ 22, Ex. 24.

and is not willing to learn them."[82] The court further found that the intense hostility between Carvel and the Foundation renders it quite impossible for Carvel to fulfill her fiduciary duties.[83] Additionally, Carvel's applications for leave to appeal to the High Court and intermediate appellate court have been denied.[84] Principles of comity render this judgment of an English court binding on this Court. Under § 1572, the foreign judgment removing Carvel as representative of the Estate is binding here by statute, as well.

Carvel tries to avoid this result by urging this Court to disregard both the Florida and High Court decisions, because they rely on the Surrogate's Court's decision as establishing the Foundation's standing as a beneficiary of the Estate. Carvel argues that the Surrogate Court's decision is not binding, because it resulted from improper procedures and judicial bribery, and that while the Surrogate's Court's decision has been affirmed,[85] the alleged judicial bribery apparently remains under investigation. Yet, for purposes of issue preclusion, a decision that has been affirmed on appeal constitutes a final judgment.[86] The existence of an investigation of the type Carvel alleges does not

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82 High Ct. J. ¶ 51.

83 *Id.* ¶¶ 53-54.

84 Fink I Aff. ¶ 25.

85 *See* Fink I Aff. ¶ 10, Ex. 12.

86 Restatement (Second) of Judgments § 13 (1982) (noting that "'final judgment' includes any prior adjudication . . . that is determined to be sufficiently firm to be accorded conclusive effect").

detract from the finality of the judgment. Even if Carvel's charges of misconduct turn out to have merit, the remedy would be to mount a collateral attack on the Surrogate's Court's judgment in New York. Until that judgment is altered, however, Carvel's allegations are not sufficient to deprive the prior judgment of its issue preclusive effect.[87]

b. Has Carvel complied with her statutory duties as Delaware ancillary administrator?

Pursuant to 12 *Del. C.* § 1541(a), the Court of Chancery can remove an administrator or executor who neglects official duties. The administrator of a decedent's estate has many statutory duties. Under 12 *Del. C.* § 1905(a), she is required to file an inventory of the estate within three months of the granting of the letters of administration. The administrator is also required to render an account of her administration to the court every year until the estate is closed.[88] With every account filed, the administrator must comply with specific notice requirements: "[e]very account filed by an executor or administrator shall be accompanied by a statement of the names and mailing addresses of each beneficiary entitled to share in the distribution of the estate."[89]

Administrators or executors of estates are among the classes of persons recognized under Delaware law as standing in the position of a fiduciary.[90] As a fiduciary, the

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87 *See id.*

88 12 *Del. C.* § 2301; Ct. Ch. R. 114.

89 12 *Del. C.* § 2302(a).

90 *Bird's Constr. v. Milton Equestrian Ctr.*, 2001 WL 1528956, at *4 (Del. Ch. Nov. 16, 2001); *In re Estate of Hedge*, 1984 WL 136921, at *2 (Del. Ch. Feb. 9, 1984).

administrator "shall not act for himself in any matter with respect to which he has duties to perform or interests to protect for another."[91] The law imposes on the administrator the duty to act in good faith, and she will be held accountable for the loss or depreciation of the assets if she breaches that duty.[92] The administrator, like a trustee, must "deal fairly with the beneficiaries" and cannot place her interests "ahead of the interests of the Trust and its other beneficiaries."[93]

The Foundation contends that even if the prior decisions are disregarded, this Court should remove Carvel as Delaware ancillary administrator, because she has neglected her statutory duties. It argues that Carvel has failed to render accountings and to file a satisfactory inventory pursuant to her statutory duties. Additionally, she has not included the Foundation as a beneficiary in her filings. Further, the Foundation asserts that Carvel consistently has shown her inability to act in the best interest of the beneficiaries of the Estate, and as such, has breached her fiduciary duties.

In response, Carvel defends some of her actions by asserting that she has been unable to ascertain the value of the Estate's Delaware assets. She contends the Foundation is withholding this information from her and that, without further discovery, she cannot perform her duties. Carvel does not explain, however, why she made no previous effort to ascertain the nature and extent of the Delaware assets since her

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91 *Vredenburgh v. Jones*, 349 A.2d 22, 33 (Del. Ch. 1975).

92 *In re Estate of Hedge*, 1984 WL 136921, at *2.

93 *In re Estate of Howell*, 2002 WL 31926604, at *2 (Del. Ch. Dec. 20, 2002).

appointment as Delaware ancillary administrator in 2003. As regards the Foundation's claims that she has acted contrary to the best interests of the beneficiaries, Carvel maintains that she owes no duties to "known fraudsters several times under investigation by law enforcement."[94]

The Delaware Register of Wills appointed Carvel Ancillary Administratrix with the Will Annexed of the Estate on February 25, 2003.[95] Under 12 *Del. C.* § 1905(a), therefore, she should have submitted an inventory by May 25, 2003. In fact, Carvel did file an inventory, but it was three days late and listed no assets other than $250,000,000 worth of "stolen assets."[96] The first accounting Carvel filed was also late and again failed to list any assets, asserting that information was being withheld by Leonard Ross, the New York ancillary administrator.[97] Apart from a second accounting filed in 2005, no other accountings have been filed. Nor has Carvel ever listed the Foundation as a beneficiary in any of her filings. As a result, the Foundation has not received formal

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94 Mar. RABSJ ¶ 59.

95 Carvel's petition included Agnes's 1995 Will, but she failed to notify the Register of the Surrogate's Court's 2002 decision, which found the 1995 Will to be in breach of the Reciprocal Will Agreement.

96 The alleged deficiencies of the initial inventory, on their own, provide no cause for removal. The Foundation failed to show it suffered any material prejudice from this incident, and the small delay pales in comparison to other examples of breach of duty. Therefore, I have not relied on the first inventory as a ground for removal.

97 Fink I Aff. ¶ 14, Ex. 16.

notice of any inventory, accounting, or other documentation since Carvel was appointed in 2003.

Carvel's actions demonstrate strong animosity toward the Foundation. Indeed, her hostility to the Foundation makes it impossible for Carvel to perform her functions as a fiduciary. While Carvel denies that she owes any duties to the Foundation, she is plainly wrong. The Foundation has been held to be a beneficiary of the Estate; therefore, Carvel, as Delaware administrator, owes fiduciary duties to the Foundation. Although Carvel may think she has the Estate's best interests in mind, her views of the Estate's best interests clearly differ markedly from those of other interested parties, such as the Foundation.

In sum, Carvel's breaches of statutory duties involve not only the timeliness and completeness of her filings, but also the neglect of her official duties as a fiduciary of the Foundation. She purposely failed to list the Foundation as a beneficiary and blames it for her inability to properly perform her obligations. Carvel may have the right to pursue her many disagreements with the Foundation and other administrators of the Estate in an appropriate forum. In fact, she has pursued such claims in the past and continues to pursue various claims at the present time in other jurisdictions. She has no right, however, to serve as the ancillary administrator of the Estate in Delaware and use that position to pursue her own agenda vis-à-vis the Foundation and Ross in the name of the Estate. Therefore, I conclude that Carvel should be removed as ancillary administrator.

B. Carvel's Motions for Various Relief

Carvel requests various forms of relief from this Court, including (i) taking jurisdiction over an accounting, (ii) placing the Foundation into receivership, (iii) an order for production of all Foundation records, and (iv) civil rights damages. None of these requests are appropriate at this time in this Court. In seeking relief based on these four claims, Carvel takes a scattershot approach that is unhelpful to her cause. She details a slew of tangential allegations touching on forgery, bribery, perjury, burglary, and murder. She does so, however, at the expense of the specificity required by this Court.

For example, her request to put the Foundation into receivership lacks, among other things, a jurisdictional hook. Carvel has not made any allegations or arguments that convince me that the Delaware Court of Chancery has jurisdiction to resolve the numerous disputes she, as a member of the Foundation, has with that entity, and, even if it did, that this Court should hear those disputes when they are the subject of litigation elsewhere.[98] An attack on the Foundation, which is a New York charitable foundation,

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[98] Indeed, it is unlikely Carvel would have standing, even if the Foundation were a Delaware entity. *See Wier v. Howard Hughes Med. Inst.*, 407 A.2d 1051, 1057 (Del. Ch. 1979) ("[I]t is clear that under the normal rules of contemporary practice, it is the Attorney General who has the exclusive power to bring actions to enforce charitable trusts, any other way of proceeding by way of actions brought by persons with an interest being likely to lead to confusing and vexatious results."). Carvel has not provided any basis for thinking the result would be different under New York law.

here in Delaware appears duplicative.[99] Nor do I perceive any basis for concluding this Court has the power to resolve the Foundation's internecine disputes. To allow Carvel effectively to use the "ancillary administration" in Delaware as a platform from which to pursue her claims regarding the internal workings of the Foundation would sanction an end-around the previously filed actions and undermine judicial efficiency and economy.[100]

The only claim Carvel has come close to making out is her request for discovery related to performing an accounting in Delaware. She seeks,

> an Order for the Court of Chancery to take jurisdiction over an intermediate accounting proceeding in the Estate; to compel discovery from Petitioner who has possession and control of all documents relevant to Estate assets potentially in Delaware, and other pertinent records . . . .[101]

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99 Carvel already has brought suit in the United States District Court for the Northern District of New York against New York State Attorney General Andrew Cuomo seeking to put the Foundation into receivership. *See* Fink II Aff. Ex. 13, at WHEREFORE clause b. When Attorney General Cuomo sought to dismiss Carvel's complaint, she accused him of "aiding and abetting civil rights violations and frauds." Fink II Aff. Ex. 14 ¶ 39. She also has sought similar relief in the High Court in London and in the Surrogate's Court in New York. *See* Fink II Aff. Ex. 15 ¶ 28.2; Fink II Aff. Ex. 16 ¶ 1.

100 The same analysis and result applies to Carvel's general request for "all alleged foundation records." ROBAA at 29. On its face, this request is overbroad, and Carvel does not explain how these records relate to the administration of the Estate in Delaware. Similarly, recognizing Carvel's status as a *pro se* litigant, the Court has attempted in vain to divine a coherent claim from her request for civil rights damages.

101 ROBAA at 28-29.

Although Carvel uses the phrase "take jurisdiction over an intermediate accounting," it does not appear that she really wants the Court to perform an accounting. Indeed, this Court does not perform accountings of estates; executors and administrators do.[102] To the contrary, Carvel alleges that she has been thwarted by the Foundation (or those who have usurped control of the Foundation) in performing her own accounting as the ancillary administrator. On this reading, what Carvel wants is discovery from the Foundation to enable her to determine whether there are any assets of the Estate in Delaware, so that the ancillary administration of those assets can proceed.[103]

In February 2003, Carvel petitioned the Register of Wills to become the ancillary administrator of the Estate in Delaware and attached the 1995 Will.[104] The statutory

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[102] *See* 12 *Del. C.* § 2302.

[103] Carvel also requests "other pertinent records," but fails to identify the requested records or how they relate to collecting and distributing property located in Delaware. Thus, the catch-all phrase "other pertinent records" adds nothing to her request.

[104] Carvel emphasizes that the Surrogate's Court stated that it could not "set up Agnes's 1988 or 1990 will as her last will and testament." Response at 15, *quoting* Sur. Ct. Decision at 21. Carvel does not explain, however, the significance of her emphasis on the "last will" or her claim that "[p]revious Wills are therefore null and void." Response at 16. If Carvel means that the Surrogate's Court held the 1995 Will is the operative document for determining whether the Foundation is the residuary beneficiary, then she misses the mark. The Surrogate's Court relied upon *Tutunjian v. Vetzigian*, 299 N.Y. 315, 316 (N.Y. 1949), which stated in relevant part:

> One may bind himself by a mutual or joint will to dispose of his estate in a specified manner. If, in violation of such agreement, one of the parties to a joint will executes a new will, the latter is recognized as a last testament but the courts will require its executor and beneficiaries to perform the contract of their decedent.

authorization for the opening of an ancillary administration in Delaware is 12 *Del. C.* § 1307. Section 1307(a) provides in relevant part: "The written will of a testator who died domiciled outside this State, but *who owned real estate or personal property located in this State,* may be admitted to probate and recorded in this State."[105] As the ancillary administrator, Carvel also attempted to file an inventory and accountings of Estate assets located in Delaware. Carvel claims Agnes may have held personal property in the form of stock in one or more companies that were incorporated in Delaware.[106] Rather than

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As the Surrogate's Court stated and the High Court recognized, which will is the "last will" is beside the point, because "the court will require its executor and beneficiaries to perform the contract of their decedent." *See also* High Ct. J. ¶¶ 38-39 ("As I have said, the Surrogate decided that the Reciprocal Will Agreement bound Agnes as from the time that Thomas died. Her personal obligation was to nominate the Foundation as the residuary beneficiary under her will . . . .").

105 12 *Del. C.* § 1307(a) (emphasis added). Thus, a predicate for opening an ancillary administration in Delaware is the existence of real or personal property here. No one contends the Estate has any real property located in Delaware. Rather, Carvel claims that there "potentially" might be personal property in Delaware. ROBAA at 29.

106 ROBAA at 28. Carvel refers to Andreas Holdings, a Delaware corporation, which Agnes allegedly controlled. In 1995, Carvel maintained a suit in the Delaware Court of Chancery in which she argued that Agnes, and not Thomas's estate, was the sole stockholder of Andreas Holdings. *Carvel v. Andreas Holdings Corp.*, 698 A.2d 375 (Del. Ch. 1995). Then Vice Chancellor, now Justice Jacobs held that the New York Surrogate's Court should determine the ownership of the Andreas stock. *Id.* at 376. Other than conclusorily claiming that the Delaware decision resulted from "perjury," Carvel has offered no basis for disregarding that holding. Thus, I find this aspect of her argument unpersuasive.

characterizing the relief Carvel seeks as an accounting, as the Foundation construes it,[107] I understand Carvel to seek a court order compelling the Foundation to turn over documents, or generally cooperate, so that Carvel can determine whether there are any assets in Delaware and, if so, what happened to those assets. Preliminarily, I must determine whether Carvel has standing to seek such relief.

1. Standard

The party requesting relief has the burden to establish his or her standing to seek it.[108] Standing means that a party must have a "legally cognizable interest" in the controversy.[109] That is, this Court will not order relief on behalf of a "mere intermeddler."[110] As discussed in Part II.A.2 *supra*, the party requesting relief must show: (1) a concrete and actual injury, as opposed to merely conjectural or hypothetical damage, (2) a causal connection between the injury and the challenged action, and (3) a likelihood, as opposed to mere speculation, that the injury will be redressed by a favorable decision.[111] Thus, the issue is whether Carvel has carried her burden of demonstrating her standing to pursue the discovery she seeks.

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107 POB at 18-19. This citation is to the Foundation's opening brief in support of its motion for summary judgment.

108 *Tunnell v. Stokley*, 2006 WL 452780, at *2 (Del. Ch. Feb 15, 2006).

109 *Stuart Kingston, Inc. v. Robinson*, 596 A.2d 1378, 1382 (Del. 1991).

110 *Tunnell*, 2006 WL 452780, at *2 (citation omitted).

111 *Dover Historical Soc'y v. City of Dover Planning Comm'n*, 838 A.2d 1103, 1110 (Del. 2003).

2. Analysis

Carvel comes to the Court wearing several hats. She claims she is: (1) "the Delaware Ancillary Administrator for the Agnes Carvel Estate"; (2) "executor and personal representative of the Agnes Carvel Estate"; (3) "voluntary limited guardian in charge of litigation for Agnes Carvel"; (4) "next friend and fiduciary to Thomas and Agnes Carvel"; (5) "sole member of the Thomas and Agnes Carvel Foundation"; (6) "interested party in the so-called 'Agnes Carvel 1991 Trust'"; and (7) "a known creditor-claimant against the Estate and trust assets."[112] I now turn to whether in any of those capacities she has standing to continue to prosecute her claims in this action.

The first two bases are no longer true statements of fact, and therefore do not support standing. For the reasons stated in this opinion, I am removing Carvel as the Delaware ancillary administrator. Similarly, Carvel has been removed as the domiciliary personal representative of the Estate in London.[113] Because Carvel is being removed as ancillary administrator, she no longer has any duty to submit an accounting here, or any right to seek discovery in connection with such a duty.

Likewise, the third and fourth bases do not confer standing to seek discovery. The positions Carvel claims to hold, including "next friend" and "voluntary limited guardian in charge of litigation," appear to be informal titles or nothing more than self-appointed positions. In the context of all the prior and co-pending litigation involving Carvel and

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[112] ROBAA at 1-2.

[113] High Ct. J. ¶¶ 55, 58.

the various rulings against her, I cannot give credence to those alleged positions in the absence of specific facts supporting their existence and materiality. Because Carvel has not alleged such facts, I find no merit in her third and fourth grounds for standing.

The fifth basis, that she is the sole member of the Foundation, provides no basis for seeking discovery of a New York foundation through the Delaware courts. As explained *supra*, Carvel has failed to allege sufficient facts to allow this Court to proceed at her behest to address the numerous disputes she has with the Foundation.

The sixth and seventh bases might provide the requisite standing to take exception to an ancillary administrator's accounting, because Carvel herself might have a cognizable claim against property located in Delaware. That, however, is not the situation before me. With Carvel's removal, there will be no ancillary administration in Delaware in the immediate future. Although this Court could appoint a successor administrator to replace Carvel, such an administrator typically would be paid out of recovered estate property located in Delaware or the proceeds from the sale of such property.[114] Here, however, Carvel has not demonstrated a likelihood that there is any property in Delaware out of which the Court could expect an administrator to be paid.[115] Thus, because Carvel has not alleged sufficient facts from which this Court reasonably

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[114] *See* 12 *Del. C.* § 2303.

[115] In fact, much of the "property" Carvel alludes to is in the form of claims she is pursuing against the Foundation and others. Whether those claims have value and whether they represent personal property located in Delaware cannot be determined on the record before me.

could infer the existence of Estate property in Delaware, the Court has no basis to appoint a successor administrator or to authorize the type of discovery Carvel seeks.

Regardless, even if there were a successor ancillary administrator in Delaware, it is far from clear that Carvel has articulated sufficient reason to allow discovery of a New York foundation when the only property alleged to exist here is stock of a Delaware entity. Without any precedent or cogent supporting argument from Carvel, I am not persuaded that when anyone—anywhere in the world—dies owning securities of a Delaware entity, a self-appointed representative in the name of her estate can come before the Register of Wills and this Court to demand a full-blown forensic investigation into a beneficiary, wherever that beneficiary happens to reside.[116] Further, the investigation Carvel requests would be especially objectionable, because it would extend far beyond merely marshalling known assets and paying creditors located in Delaware.

Thus, Carvel has failed to demonstrate any basis for according her standing to seek discovery from the Foundation or others to determine whether the Estate has assets in Delaware and, if so, what happened to them. Based on this conclusion, I need not address any further the merits of Carvel's claim for such discovery.

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[116] *See In re Nielsen's Will*, 264 N.Y.S.2d 302, 306 (N.Y. Sur. Ct. 1965) ("With the widespread distribution of corporate stock in this country, it would be a singular proposition to hold, that administration could be taken out in every foreign jurisdiction where a stockholder might be a shareholder in a corporation there domiciled.") (internal quotation and citations omitted).

III. CONCLUSION

For the foregoing reasons, the Foundation's motion for summary judgment is granted, and Carvel is hereby removed as ancillary administrator of Agnes Carvel's Estate. Further, Carvel's Motion for Intermediate Accounting and related relief is denied.[117]

IT IS SO ORDERED.

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[117] The only motion remaining open is Carvel's Motion for Litigation Expenses. To the extent that motion seeks discovery relief, it is essentially the same as that requested under Carvel's Motion for Intermediate Accounting. Accordingly, that aspect of Carvel's Motion for Litigation Expenses is denied for the same reasons stated herein. The premise of that motion's request for reimbursement of Carvel's litigation expenses is that the Foundation has proceeded in this action in "bad faith." Having ruled in the Foundation's favor on the motions currently before me, I also reject Carvel's allegations of bad faith as without merit and deny her claim for fees and expenses.