

IN THE COURT OF CHANCERY OF THE STATE OF DELAWARE

IN THE MATTER OF: THE TRUSTS)
U/A/D DECEMBER 30, 1996 AND THE)
TRUSTS U/A/D JANUARY 13, 2006) Civil Action No. 3811-VCP
CREATED BY MICHAEL J. FARRELL)

MEMORANDUM OPINION

Submitted: December 12, 2008

Decided: December 18, 2008

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PARSONS, Vice Chancellor.

This is an action by the trustee of six Delaware trusts (the “Trusts”) for instructions as to whether it must obey certain orders of a Pennsylvania court and take action pursuant to those orders, which the trustee alleges may detrimentally affect the interests of the beneficiaries of the six Trusts. For the reasons stated in this memorandum opinion, I deny the petition for instructions.

I. FACTUAL BACKGROUND

A. The Parties and Facts

Petitioner, NatCity Trust Company of Delaware (the “Petitioner”), is the sole trustee of the Trusts. The situs of and principal place of administration for the Trusts is Wilmington, Delaware.

Respondent, Christine M. Farrell (the “Respondent” or “Mrs. Farrell”), a resident of Pennsylvania, is the wife of Michael J. Farrell and the mother of the three named beneficiaries of the Trusts.

Michael J. Farrell (“Mr. Farrell”), a resident of Pennsylvania, is the husband of Respondent and the father of the three named beneficiaries of the Trusts.

Michael J. Farrell, Jr., James L. Farrell, and Christopher P. Farrell (the “Beneficiaries”) are the named beneficiaries of the Trusts. James L. Farrell and Christopher P. Farrell (the “Minor Beneficiaries”) are minors. Michael J. Farrell, Jr. is an adult. The Beneficiaries have lived with Mrs. Farrell since August 2003 when she and Mr. Farrell legally separated.

Mr. Farrell and Respondent were married in 1988. In three separate agreements dated December 30, 1996, Mr. Farrell created three separate trusts (the “1996 Trusts”)

under Pennsylvania law, each for the benefit of one of the Beneficiaries, with himself as grantor and Thomas J. Reinecke as trustee. Mr. and Mrs. Farrell owned a 90% interest as joint tenants in a limited partnership, the Farrell Family Partnership (“FFP1”). FFP1’s general partner, Farrell Investment Company (“FIC”), owned the remaining 10% interest in the partnership. In 2002, FFP1 purchased a substantial number of shares of Standard Steel stock in three different classes, and Mr. Farrell became President and CEO of Standard Steel.

Mr. Farrell filed for divorce in August 2003 and he and Mrs. Farrell became legally separated. On January 13, 2006, Mr. Farrell executed three separate trust agreements under Pennsylvania law, thereby creating three more trusts (the “2006 Trusts”) each for the benefit of one of the Beneficiaries, with Mr. Farrell as grantor and Reinecke as trustee. The Family Division of the Pennsylvania Court of Common Pleas of Allegheny County (the “Pennsylvania court”) held a 15-day equitable distribution and divorce hearing between November 2006 and June 2007. In early 2006, Mr. Farrell caused FFP1 to sell its shares of Standard Steel stock to the 2006 Trusts, a newly-formed partnership created by Farrell (“FFP2”), and the Farrell Family Foundation. After that sale, in April 2006, the three entities sold the Standard Steel stock for more than \$27 million, portions of which were retained by the 2006 Trusts or held in escrow.

On December 21, 2006, Reinecke resigned as trustee of the Trusts and appointed Petitioner as successor trustee. On January 4, 2007, this Court entered two separate orders reforming the 1996 and 2006 Trusts whereby it accepted jurisdiction over the Trusts and provided, *inter alia*, that Delaware law governed all matters of the Trusts’

administration. Mrs. Farrell was not notified of the reformation and the Court was not informed of the ongoing equitable distribution and divorce proceedings in the Pennsylvania court.

In March 2007, Mr. Farrell orchestrated several transactions involving the Trusts. On March 1, FFP1 transferred a 45% ownership stake in M&T Partners, whose primary asset is real estate valued at \$6.7 million, to the 1996 Trusts. Before that transfer, FFP1 owned 50% of M&T Partners. On or about March 1, 2007, FFP1 transferred its remaining 5% ownership interest in M&T Partners to FIC, whose manager was Reinicke. On March 27, the 2006 Trusts received an additional \$3.3 million, which had been held in escrow, from the sale of Standard Steel stock. On March 29, Mr. Farrell caused FFP1 to transfer ownership of a \$4 million insurance policy on Mr. Farrell's life from FFP1 as beneficiary to the 1996 Trusts as owners and beneficiaries. These transactions occurred during the pendency of the equitable distribution and divorce hearing in the Pennsylvania court.

B. Procedural History

On June 29, 2007, after completion of the equitable distribution and divorce hearing involving Mr. and Mrs. Farrell in Pennsylvania, Master Patricia G. Miller issued a report and recommendation estimating the value of the marital estate at more than \$36.4 million and finding that Mrs. Farrell was entitled to 40% of the marital assets.¹ On

¹ On May 5, 2008, Master Miller issued a follow-up report that reduced the value of the marital estate to approximately \$34 million.

March 28, 2008, Mrs. Farrell asked the Pennsylvania court to require Mr. Farrell to produce documentation and information regarding the Trusts and all transfers to and distributions from them. The Pennsylvania court granted that relief on April 1. In response, Petitioner filed a Petition for Instruction in the Court of Chancery on June 6, 2008, asking this Court to determine to what extent Petitioner had to comply with Respondent's request for information regarding the Trusts. The parties agreed to a stipulation governing the release of information regarding the Trusts, which this Court approved on August 13.

The Pennsylvania court entered an order on September 2, 2008 (the "Sept. 2 Order") voiding the transfers made or caused to be made by Mr. Farrell into the Trusts. On September 29, 2008, the presiding judge, the Honorable David N. Wecht of the Family Division of the Pennsylvania Court of Common Pleas, was assigned to the Orphans' Court Division, thereby allowing him to adjudicate matters relating to the Trusts. On October 16, Judge Wecht entered an order (the "Oct. 16 Order") directing Mrs. Farrell and Mr. Farrell to open an escrow account into which Petitioner must transfer from the Trusts the proceeds and reinvestments from the 2006 sale of Standard Steel stock, any interest in M&T Partners held by the 1996 Trusts, and the life insurance policy and its cash surrender value.²

² Specifically, the Pennsylvania court ordered Petitioner to change the designated beneficiary of the life insurance policy to Respondent. Oct. 16 Order at 3.

On October 31, 2008, Petitioner filed its First Amended Petition for Instructions (the “Amended Petition”) asking this Court for injunctive relief prohibiting it from complying with the Sept. 2 and Oct. 16 Orders (collectively, the “Family Court Orders”). Concurrently, Petitioner, NatCity Trust, sought a determination in the Pennsylvania court that it was not subject to personal jurisdiction in that court and a stay of the Family Court Orders pending the disposition of its Amended Petition in Delaware. On December 9, 2008, after a two-day hearing, the Pennsylvania court found it had both general and specific jurisdiction³ over Petitioner. In addition, the Pennsylvania court denied Petitioner’s application to stay the Pennsylvania action in favor of the Delaware proceedings. Professing concern that Petitioner would refuse to comply with the Family Court Orders, Mrs. Farrell initiated contempt proceedings against Petitioner in the Pennsylvania court, which are scheduled to be held on December 18 and 19, 2008. Following expedited briefing by the parties, this Court heard oral argument regarding Petitioner’s October 31 request for injunctive relief in Delaware on December 12, 2008.

C. Parties’ Contentions

Petitioner seeks an order from this Court “instructing it . . . whether it must obey certain orders of a foreign court and take action pursuant to such orders”⁴ In other

³ During the hearing on November 25, 2008, Petitioner conceded the Pennsylvania court had general jurisdiction over it. Shandler Aff., Tr. of Nov. 25, 2008 Oral Argument at 48-50.

⁴ First Am. Pet. for Instruction (“Am. Pet.”) at 1.

words, Petitioner requests permission to ignore the Family Court Orders requiring it to surrender the assets of the Trusts to an escrow agent.

Petitioner contends that the Court of Chancery has jurisdiction over the Trusts due to their situs in Delaware and two orders by this Court on January 4, 2007, reforming the Trusts so that Delaware law governs all matters pertaining to the Trusts' administration.⁵ The petitions for instruction that resulted in the Jan. 4 Orders disclosed nothing about the equitable distribution and divorce proceeding that was then pending between Mrs. Farrell and Mr. Farrell in the Pennsylvania court. Likewise, Mrs. Farrell received no notice of those petitions for instruction or the resulting Jan. 4 Orders. Petitioner also argues that this Court has jurisdiction to grant the requested relief pursuant to 10 *Del. C.* § 6504(2), which enables a trustee to obtain a declaratory judgment to direct a trustee to "do or abstain from doing any particular act in their fiduciary capacity."⁶

Petitioner asks this Court to enjoin it from following the orders of the Pennsylvania court. Petitioner avers that it has a reasonable likelihood of success on the merits to prove that the assets of the Trusts should not be transferred to an escrow agent,

⁵ The January 4, 2007 Orders ("Jan. 4 Orders") reformed the 1996 Trusts and 2006 Trusts, respectively. In addition to declaring that Delaware law governed all administration matters, the Jan. 4 Orders provided for appointment of an investment adviser pursuant to 12 *Del. C.* § 3313(b), a trust protector to remove and appoint the adviser, and Mr. Farrell as the guardian for the Beneficiaries in matters relating to the Trusts. The Jan. 4 Orders also explicitly stated that the Court of Chancery accepted jurisdiction over the Trusts effective from the time Petitioner was appointed trustee on December 21, 2006. Jan. 4 Orders at 4.

⁶ 10 *Del. C.* § 6504(2). Section 6504(2) is discussed in detail *infra* Part A.

because, among other things, Mrs. Farrell failed to provide proper service of process on Petitioner in the Pennsylvania court. Petitioner further asserts that this Court is not obligated to recognize the Family Court Orders because they do not constitute nonappealable, valid relief entitled to full faith and credit pursuant to the Delaware Uniform Enforcement of Foreign Judgments Act (“DUEFJA”)⁷ and the Delaware Uniform Foreign Money-Judgments Recognition Act (“DUFMJRA”)⁸. According to Petitioner, the Trusts and the Beneficiaries will suffer irreparable harm if this Court declines to grant the requested relief because the Trusts’ assets may be distributed from the escrow account to Respondent before a final judgment is rendered in the Pennsylvania action. Petitioner also contends that the Beneficiaries’ interests will be detrimentally affected because the Family Court Orders require transferring the Trusts’ assets, which include shares of stock subject to a restriction agreement that would be triggered by the transfer to an escrow agent, making that stock available at a deep discount to other stockholders. Finally, Petitioner argues that the balance of the equities tips in its favor because the Trusts will incur no losses if they remain in place until a final, nonappealable order is rendered and because neither Petitioner nor the Beneficiaries have been afforded a full and fair opportunity to be heard in Pennsylvania.

⁷ 10 *Del. C.* §§ 4781-4787.

⁸ 10 *Del. C.* §§ 4801-4808. According to Petitioner, the DUFMJRA empowers this Court to stay the proceedings and instruct Petitioner to ignore the Family Court Orders during the pendency of any appeal in Pennsylvania. Legal Mem. in Supp. of Pet’r’s Mot. to Reaffirm Jurisdiction and to Enjoin Distributions from the Trusts at 21.

Mrs. Farrell responds that this Court should decline to grant the requested injunctive relief, which effectively would nullify the Family Court Orders, in the interests of comity with the Pennsylvania court and the efficient administration of justice. Moreover, Respondent contends that Petitioner has failed to show a reasonable likelihood of success on the merits, because the Pennsylvania court already has found that it may exercise jurisdiction over Petitioner and the Trusts. Mrs. Farrell also denies that she is seeking enforcement of, or full faith and credit for, a final judgment under either the DUEFJA or the DUFMJRA. As to the irreparable harm alleged by Petitioner, Mrs. Farrell asserts the Pennsylvania court has procedural safeguards capable of protecting all parties' legitimate rights. In addition, Mrs. Farrell has represented to this Court that the transfer to an escrow agent can be effected without incurring substantial fees, that the investment entity currently managing the Trusts also can manage the escrow account, and that she will provide notice to all parties, including Petitioner and the Beneficiaries, before she seeks disbursement of any assets from the escrow account.

II. ANALYSIS

A. Court of Chancery Jurisdiction

Petitioner avers that jurisdiction rests with this Court to “instruct[] . . . whether it must obey certain orders of a foreign court and take action pursuant to such orders”⁹ Petitioner identifies 10 *Del. C.* § 6504 as one source for the propriety of its request and for this Court’s authority. Section 6504 provides in pertinent part: “Any person

⁹ Am. Pet. at 1.

interested as . . . trustee . . . in the administration of a trust . . . may have a declaration of rights or legal relations in respect thereto: . . . (2) To direct the . . . trustees to do or abstain from doing any particular act in their fiduciary capacity”¹⁰ Although this Court has the power to make a declaration like that requested by Petitioner, the conditional language of the statute, exemplified by use of the word “may,” imbues me with discretion to determine whether to grant such relief in light of the circumstances.¹¹

Petitioner further asserts that this Court has jurisdiction over the Trusts due to the Jan. 4 Orders. This Court did accept jurisdiction over the Trusts in the Jan. 4 Orders, and those Orders do provide that Delaware is the situs and principal place of administration for the Trusts and that Delaware law shall govern all matters of the Trusts’ administration. Thus, I do have jurisdiction to hear this dispute.¹² Nevertheless, I may exercise my discretion in determining whether to grant the requested relief because it is axiomatic that the existence of jurisdiction does not mandate granting the requested relief. In that regard, I am mindful that Petitioner obtained the Jan. 4 Orders, presumably with the backing of Mr. Farrell, without disclosing to this Court the existence of the

¹⁰ 10 *Del. C.* § 6504.

¹¹ *See Clabault v. Caribbean Select, Inc.*, 805 A.2d 913, 917-18 (Del. Ch. 2002) (finding that use of the terms “may summarily order” granted the court discretion in whether to order an annual stockholders meeting pursuant to 8 *Del. C.* § 211(c)).

¹² *See, e.g., Sloan v. Segal*, 2008 WL 81513, at *2 (Del. Ch. Jan. 3, 2008) (finding subject matter jurisdiction over the controversy based, in part, on the fact that situs and place of administration was Delaware and trust agreement provided that Delaware law governed questions of administration).

arguably related litigation in Pennsylvania. Leaving aside whether that other litigation should have been disclosed, Petitioner's failure to disclose it causes me to give less weight to the Jan. 4 Orders in determining the equities of the present dispute. In addition, because Petitioner's request for relief effectively seeks a preliminary injunction prohibiting Petitioner from complying with the Family Court Orders of the Pennsylvania court, I examine the Amended Petition under the standard for granting a preliminary injunction.

B. Petitioner's Request for Injunctive Relief

1. Standard for injunctive relief

The Court of Chancery has broad discretion in granting or denying injunctive relief.¹³ A preliminary injunction may be granted where the moving party shows: (1) a reasonable probability of success on the merits at a final hearing; (2) an imminent threat of irreparable injury; and (3) a balance of the equities that tips in favor of issuing the requested relief.¹⁴ The movant bears a considerable burden in that it must establish clearly each of these necessary elements "because injunctive relief will never be granted unless earned."¹⁵ It is not sufficient to demonstrate merely that a dispute exists and that

¹³ See *Data Gen. Corp. v. Digital Computer Controls, Inc.*, 297 A.2d 437, 439 (Del. 1972) (citing *Richard Paul, Inc. v. Union Improvement Co.*, 91 A.2d 49 (Del. 1952)).

¹⁴ *Nutzz.com v. Vertrue, Inc.*, 2005 WL 1653974, at *6 (Del. Ch. July 6, 2005) (internal citations omitted).

¹⁵ *La. Mun. Police Emps.' Ret. Sys. v. Crawford*, 918 A.2d 1172, 1185 (Del. Ch. 2007) (internal citations omitted).

the movants might be injured.¹⁶ Because there is no mechanical formula for determining the weight assigned to each element, however, a strong demonstration as to one may serve to overcome a marginal demonstration of another.¹⁷

“[P]reliminary injunctive relief should not be granted if the injury may be adequately compensated for after a full trial on the merits, either by an award of damages or by some form of final equitable relief.”¹⁸ To merit injunctive relief, the injury must be incapable of fair and reasonable redress by a court of law.¹⁹

2. Whether Petitioner is entitled to injunctive relief

a. Reasonable likelihood of success on the merits

Petitioner advances two arguments regarding its likelihood of success on the merits. First, Petitioner avers that the Family Court Orders do not constitute final, nonappealable orders or judgments and, therefore, cannot be accorded full faith and credit under the DUEFJA and the DUFMJRA. Second, Petitioner contends that it will be successful in appealing the Family Court Orders because it and the Beneficiaries are indispensable parties that should have been included in the proceedings in Pennsylvania. I address these arguments without touching on the merits of the Pennsylvania court’s

¹⁶ *Id.*

¹⁷ *Alpha Builders, Inc. v. Sullivan*, 2004 WL 2694917, at *3 (Del. Ch. Nov. 5, 2004) (citing *Cantor Fitzgerald, L.P. v. Cantor*, 724 A.2d 571, 579 (Del. Ch. 1998)).

¹⁸ *Id.*

¹⁹ *State v. Del. State Educ. Ass’n*, 326 A.2d 868, 875 (Del. Ch. 1974).

decision that certain transfers into the Trusts made or caused to be made by Mr. Farrell constitute fraudulent conveyances and that those transfers are void.

The DUFMJRA applies to “any foreign judgment that is final and conclusive and enforceable where rendered even though an appeal therefrom is pending.”²⁰ Section 4804 of the DUFMJRA provides that a foreign judgment is not final and conclusive where the foreign court did not have personal jurisdiction over the parties or over the subject matter and that this Court is not required to recognize the judgment if the parties did not receive timely notice of the proceedings. Petitioner argues that it has a reasonable likelihood of succeeding in proving that it neither received timely notice of nor was subject to the Pennsylvania court’s jurisdiction (although it has conceded there is “general jurisdiction” over it). Regardless of Petitioner’s likelihood of success *vel non* on those issues, the DUFMJRA does not apply to the present controversy. Section 4801 defines a foreign judgment for purposes of the Act as “any judgment of a foreign state” and further defines a foreign state as “any governmental unit other than the United States or any state . . . thereof.” Because the DUFMJRA on its face does not apply to judgments of courts in other states, it has no application to the Family Court Orders entered by the Pennsylvania court.

The DUEFJA, however, does apply to judgments, decrees, or orders entered by courts of other states, such as the Pennsylvania court. Petitioner avers that it is reasonably likely to succeed in demonstrating that this Court must stay the enforcement

²⁰ 10 *Del. C.* § 4802.

of the Family Court Orders because an appeal will be taken therefrom by Mr. Farrell. This Court arguably is obligated under 10 *Del. C.* § 4784 to stay the enforcement of another state court's order, as to which an appeal is pending or will be taken, if that order is entitled to full faith and credit in Delaware and a properly authenticated copy of it is filed with the Prothonotary.²¹ Still, it is not clear the DUEFJA even applies in the circumstances of this case. Respondent, Mrs. Farrell, has not filed the Family Court's Orders with the Prothonotary or requested that I enforce those orders. Instead, Petitioner has moved for instructions regarding whether it may ignore the Family Court Orders and refuse to transfer the Trusts' assets into an escrow account.

The Pennsylvania court has found that Petitioner is subject to its jurisdiction and scheduled a contempt hearing there for December 18 and 19, 2008. I have no reason to question the Pennsylvania court's ruling, and, in fact, Petitioner conceded that it was

²¹ Section 4784 provides:

(a) If the judgment debtor shows the court that an appeal from the foreign judgment is pending or will be taken, or that a stay of execution has been granted, the court shall stay enforcement of the foreign judgment until the appeal is concluded, the time for appeal expires, or the stay of execution expires or is vacated, upon proof that the judgment debtor has furnished security for the satisfaction of the judgment as required by the state in which it was rendered.

(b) If the judgment debtor shows the court any ground upon which enforcement of a judgment of the Superior Court of this State would be stayed, the court shall stay enforcement of the foreign judgment for an appropriate period, upon requiring the same security for satisfaction of the judgment which is required in this State.

10 *Del. C.* § 4784.

subject to the court's general jurisdiction. Petitioner may elect not to comply with the Pennsylvania court's orders and face the consequences of such a decision. This Court, however, is not required to issue a stay under the DUEFJA where no enforcement of a foreign judgment has been requested.

Petitioner also asserts it is likely to succeed in appealing the Family Court Orders because Petitioner and the Beneficiaries are indispensable parties. Under Pennsylvania law, "[a] party is indispensable when he has such an interest that a final decree cannot be made without affecting it, or leaving the controversy in such a condition that the final determination may be wholly inconsistent with equity and good conscience."²² In *Van Buskirk v. Van Buskirk*,²³ a case involving the equitable distribution of property between a husband and wife, the parents of the husband transferred equitable ownership to the couple, but retained legal title.²⁴ The Pennsylvania Supreme Court held that the parents were indispensable parties to the equitable distribution proceedings because the disposition of the property directly affected the rights of the parents.²⁵ Similarly here, Petitioner argues the Beneficiaries' rights regarding the Trusts' assets are directly affected by the disposition of those assets contemplated by the Family Court Orders and, therefore, the Beneficiaries are indispensable parties in the Pennsylvania proceeding. At

²² *Van Buskirk v. Van Buskirk*, 590 A.2d 4, 7 (Pa. 1991) (quoting *Hartley v. Langkamp*, 90 A. 402, 403 (Pa. 1914)).

²³ 590 A.2d 4.

²⁴ *Id.* at 6-7.

²⁵ *Id.* at 7.

a minimum, Petitioner has made a colorable showing that the Beneficiaries, and perhaps Petitioner, as well, are indispensable parties to the equitable distribution proceedings in Pennsylvania. Thus, as to Petitioner's request for injunctive relief, I find that Petitioner has demonstrated a reasonable likelihood of success on the merits of the argument that it and the Beneficiaries should have been joined as indispensable parties to the Pennsylvania action.

b. Imminent threat of irreparable harm

Petitioner further contends that the Beneficiaries will suffer irreparable harm because the Family Court Orders mandate that all of the Trusts' assets be transferred to an escrow account and, under 23 Pa. Cons. Stat. § 3502(f), Mrs. Farrell may seek a partial distribution or assignment of those assets before a final order is entered by the Pennsylvania court. According to Petitioner, because the Trusts' assets are likely to be found nonmarital assets and because the Family Court Orders provide for the transfer of Trust assets in excess of the Pennsylvania court's award to Mrs. Farrell, those assets may never be returned to the Trusts. Petitioner further asserts that the costs and fees arising from the transfer of the assets, as well as the potential loss from the discount price triggered by the transfer of certain restricted stock, will reduce substantially the corpus of the Trusts.

Despite Petitioner's stated fears that the Trusts' assets will be drained at the expense of the nonparty Beneficiaries, there is no reason to doubt the Pennsylvania court's ability to address those concerns. The Family Court Orders explicitly state that the funds cannot be removed or transferred from the escrow account unless the parties

consent or the court approves a distribution.²⁶ Furthermore, Mrs. Farrell has agreed to notify all parties, including Petitioner, Mr. Farrell, and the Beneficiaries, before seeking any distribution of assets from the escrow account.²⁷ As for the fact that the Beneficiaries are nonparties to the Pennsylvania action, I have authorized the Delaware Guardian Ad Litem (“GAL”) to retain counsel in Pennsylvania to represent their interests in that court.²⁸ In addition, as to the question whether Petitioner is subject to personal jurisdiction in the Pennsylvania court, that issue has been litigated there and, to the extent Petitioner disagrees with a ruling or order, it may seek redress on appeal or otherwise as provided in the Pennsylvania laws and rules of civil procedure.

The transfer of the Trusts’ assets into an escrow account may present some practical challenges for the parties and the Pennsylvania courts, including how to minimize administrative fees and transfer costs and how to avoid triggering the provisions of any agreements regarding the transfer of restricted stock held by the Trusts. Respondent has agreed to request an in-kind transfer of Trust assets to the escrow account, which should eliminate costs related to forced sales or liquidation of the portion of the assets comprising publicly marketable securities. In addition, Mrs. Farrell is amenable to having the same entity currently performing investment management

²⁶ Oct. 16 Order at 1.

²⁷ Resp’t’s Answering Br. in Opp’n to Pet’r’s Req. to Reaffirm Jurisdiction and for Entry of Injunctive Relief (“RAB”) at 42.

²⁸ Payment of counsel retained in Pennsylvania by the Beneficiaries is addressed *infra* Part C.

services for the Trusts continue to perform those services for the escrow account.²⁹ As for the stock subject to restrictions on transfer, the Pennsylvania court can address any issues that may arise. Moreover, to the extent Petitioner or the Beneficiaries consider themselves aggrieved by any decision of the Pennsylvania court, regarding a stay or otherwise, they may pursue their rights under the procedures of the Pennsylvania courts. Thus, Petitioner has not demonstrated the existence of a threat of imminent irreparable harm to the interests of itself or the Beneficiaries sufficient to support issuance of the injunctive relief it seeks.

c. Balance of the equities

Petitioner contends the balance of the equities favors it because no distributions will be made from the Trusts before the conclusion of the Pennsylvania proceedings. In addition, Petitioner avers that only this Court may hear all parties, including Petitioner and the Beneficiaries, on the ultimate disposition of the Trusts' assets pursuant to the Pennsylvania court's finding that some transfers to the Trusts were fraudulent and void. Mrs. Farrell disagrees, arguing that the balance of the equities tips in her favor because granting injunctive relief in this jurisdiction would give rise to conflicting orders in Delaware and Pennsylvania concerning the treatment of the Trusts' assets. In turn, conflicting orders probably would delay the proceedings in the Pennsylvania court. Respondent also asserts that all parties can be heard in Pennsylvania.

²⁹ RAB at 41.

The Pennsylvania court has determined that it may exercise jurisdiction over Petitioner and the Trusts' assets. Pursuant to that authority, the Pennsylvania court ordered Petitioner to convey all assets to a Pennsylvania escrow account in the names of Mr. and Mrs. Farrell's respective attorneys. An injunction prohibiting Petitioner from transferring the Trusts' assets to such an escrow account would directly conflict with the Family Court Orders. What Petitioner requests is an order from this Court that would allow it to ignore a contrary order from another court. In determining whether to grant such extraordinary relief, I must be mindful of the interests of comity and the efficient administration of justice.³⁰ Those interests are especially important here because many of the relevant actions occurred during the pendency of the Pennsylvania litigation.

³⁰ The Delaware Supreme Court has defined comity as:

neither a matter of absolute obligation, on one hand, nor of mere courtesy and good will, upon the other. But it is the recognition which one nation allows within its territory to the legislative, executive, or judicial acts of another nation, having due regard both to international duty and convenience, and to the rights of its own citizens or of other persons who are under the protection of its laws.

Taylor v. LSI Logic Corp., 715 A.2d 837, 842 (Del. 1998). The same principles apply to acts of the courts of another state. This Court often considers the importance of comity in deciding how to proceed in the face of a similar action pending in a sister court of another jurisdiction. *See, e.g., Sprint Nextel Corp. v. iPCS, Inc.*, 2008 WL 4516645, at *5 (Del. Ch. Oct. 8, 2008) (considering the broader policies of comity between the states in staying Delaware action in favor of a parallel Illinois action); *In re Delta & Pine Land Co. S'holders Litig.*, 2000 WL 1010584, at *5 (Del. Ch. July 17, 2000) (finding in interests of comity that sister court in Mississippi should have first opportunity to resolve claims because they were first filed there).

In addition to the interests of comity, I am chary of granting injunctive relief that effectively might reward Petitioner and Mr. Farrell for their less-than-forthright petition to reform the Trusts in December 2006 or January 2007. Such a result might encourage other parties to submit petitions to this Court without disclosing the relevant context or circumstances.

C. Practical Considerations

Because I am denying the request for injunctive and other relief in the Amended Petition, Petitioner and the Beneficiaries must pursue their concerns about the Family Court Orders and the disposition of the Trusts' assets in the Pennsylvania court. As a practical matter, there may be disputes among the parties as to whether, and to what extent, provision should be made for Petitioner and the Beneficiaries to charge, or to recoup from, the Trusts or the Trusts' assets the attorneys' fees and other expenses they reasonably incur in attempting to preserve their interests in Pennsylvania. As previously stated, I consider it appropriate that the Beneficiaries, at a minimum, be able to pursue any rights they may claim to participate in the Pennsylvania action. As the children of Mr. and Mrs. Farrell, the Beneficiaries understandably wish to avoid taking sides in this dispute, according to the GAL. Yet, the children presumably have no ability to retain and pay for counsel on their own, other than through the GAL and the Trusts. If the Trusts' assets are transferred to an escrow account overseen by counsel for Mr. and Mrs. Farrell, however, arranging for reimbursement of the Beneficiaries' attorneys' fees could be problematic. For example, one or more of the reviewing escrow agents/attorneys probably would represent a client with interests adverse to the Beneficiaries in this

context. On the other hand, if at least some of the Trusts' assets remained in the Trusts in Delaware pending any appeal, Petitioner and the Beneficiaries could seek reimbursement from the corpus of the Trusts under the auspices of this Court and with notice to all interested parties.³¹ Nevertheless, nothing in the record suggests that the issue of possible reimbursement for attorneys' fees and expenses incurred by counsel for the Beneficiaries or Petitioner has ever been raised in the Pennsylvania court. That court undoubtedly can handle requests for reimbursement from those litigants, including any complications presented by the specific facts of this case. Accordingly, I need not attempt to fashion some type of relief on the tangential issue of attorneys' fees, especially when any order I might enter could be misapprehended as an attempt to undermine the Family Court Orders of the Pennsylvania court.

³¹ Section 3921(c) of Title 12 of the Delaware Code empowers and commands a guardian ad litem to "do whatever is necessary for the care, preservation and increase of the [minor] person's property" Section 3921(e) provides that a guardian ad litem "may employ, retain or consult . . . attorneys-at-law . . . and pay their reasonable fees and expenses." By its plain language, § 3921 directs guardians ad litem to protect the interests of their wards and contemplates that retention of counsel may be required to do so. I agree with the GAL here that procuring representation in Pennsylvania to pursue the interests of the Beneficiaries seems advisable for the care and preservation of their rights under the Trusts. Accordingly, I have authorized the GAL to retain counsel in Pennsylvania. As for Petitioner, 12 *Del. C.* § 3584 authorizes this Court "to award costs and expenses, including reasonable attorney's fees . . . to be paid . . . from a trust that is the subject of the controversy" when "justice and equity" require that result.³¹ See *In re Trust U/A McKinley*, 2002 WL 31934411, at *5 (Del. Ch. Dec. 31, 2002) (finding attorneys' fees expended by trustee were properly reimbursable because the lawsuit benefited the Trust).

III. CONCLUSION

For the reasons discussed in this opinion, I deny the relief requested by Petitioner in its Amended Petition.

IT IS SO ORDERED.