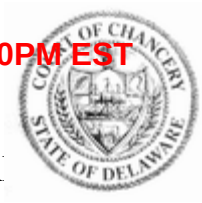

IN THE COURT OF CHANCERY OF THE STATE OF DELAWAR

DAVID LECRENIER and IVY LECRENIER,	:	
Plaintiffs,	:	
v.	:	**C.A. No. 4927-VCN**
CENTRAL OIL ASPHALT CORPORATION, F.L. SHAFER, DANIEL MCSWINEY, ROBERT W. LEE, and JOHN PAUL MCSWINEY,	:	
Defendants.	:	

MEMORANDUM OPINION

Date Submitted: October 18, 2010
Date Decided: December 22, 2010

Robert Jacobs, Esquire and Jordan Ponze Perry, Esquire of Jacobs & Crumplar, P.A., Wilmington, Delaware and Andrew J. DuPont, Esquire of Locks Law Firm, Philadelphia, Pennsylvania, Attorneys for Plaintiffs.

Allen M. Terrell, Jr., Esquire and Robert L. Burns, Esquire of Richards, Layton & Finger, P.A., Wilmington, Delaware, Attorneys for Defendants Central Oil Asphalt Corporation, Daniel McSwiney, Robert W. Lee, and John Paul McSwiney.

NOBLE, Vice Chancellor

I. INTRODUCTION

Plaintiffs David and Ivy LeCrenier brought this action against Defendant Central Oil Asphalt Corporation ("Central Oil" or the "Company"), a dissolved Delaware corporation, and certain of its current and former directors (the "Individual Defendants").[1] The Plaintiffs seek nullification of Central Oil's certificate of dissolution, restoration of its corporate existence, and appointment of a receiver to manage its affairs. The Court now addresses the Defendants' motion to dismiss or, alternatively, to stay.

II. BACKGROUND[2]

Mr. LeCrenier has suffered from Myelodysplastic Syndrome since December 2001, allegedly caused by occupational exposure to benzene, including benzene-containing products of Central Oil.[3] As a consequence, the Plaintiffs filed a civil action in Florida state court (the "Florida Action") in March 2005 against

[1] The Individual Defendants include Daniel McSwiney, Robert W. Lee, and John Paul McSwiney. The Plaintiffs also named F.L. Shafer, a deceased former director of Central Oil, as a defendant. Neither she nor her estate, however, is represented by counsel in this action.
[2] The factual background is based on allegations in the Complaint ("Compl.").
[3] Compl. ¶ 10.

Central Oil and others.[4] In the Florida Action, the Plaintiffs seek damages under theories of negligence, strict liability, and intentional tort.[5]

On June 6, 20007, during the course of the Florida Action, Central Oil filed a certificate of dissolution.[6] The Individual Defendants, nonresidents of Delaware, were directors of Central Oil at the time of the Company's dissolution.[7] While winding up its affairs, Central Oil served Plaintiffs' counsel in February 2009 with a notice of dissolution and last date for claimants to assert claims.[8] In response, the Plaintiffs served a claim on the Company.[9] That claim was later rejected by Central Oil, which also denied the Plaintiffs' request to establish a holdback amount for satisfaction of any judgment against Central Oil in the Florida Action.[10]

The Plaintiffs subsequently filed this action on September 29, 2009. They request nullification of Central Oil's certificate of dissolution and

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[4] *Id.* ¶ 11. The Complaint references "Exhibits A-D", yet no exhibits accompanied the Plaintiffs' filing. The Plaintiffs' answering brief, however, attaches a document that appears to be a copy of that Complaint, including Exhibits A-D. *See* Pls.' Answering Br. in Opp'n to the Mot. to Dismiss ("Pls.' Br."), Ex. A. In addition, following the prayer for relief in the Complaint is a "Second Amended Civil Action Complaint." *See* Compl. at 7-28. This appears to be the underlying tort action filed by the Plaintiffs in Florida and referenced as "Exhibit B" in Paragraph 11 of the Complaint.
[5] Compl. ¶ 11.
[6] *Id.* ¶ 12.
[7] *Id.* ¶ 13.
[8] *Id.* ¶ 14.
[9] *Id.* ¶ 15.
[10] *Id.* ¶ 16.

restoration of its corporate existence because the Company allegedly was not properly wound up as required by the Delaware General Corporation Law (the "DGCL").[11] For that reason, the Plaintiffs also allege that the appointment of a receiver under 8 *Del. C.* § 279 is necessary to carry out the unfinished business of Central Oil.[12]

III. CONTENTIONS

The Plaintiffs allege that their ongoing claim in the Florida Action against Central Oil "remains unsatisfied despite the dissolution or purported dissolution" of the Company making it "necessary to nullify the certificate of dissolution for the corporation, restore the corporate existence of Central Oil and appoint a receiver . . . ."[13] Because Central Oil "refused to provide the amount of assets now available to satisfy [Plaintiffs'] claims or state how much security will be set aside," the Plaintiffs argue that the Company has "unfinished business."[14] The appointment of an independent receiver, the Plaintiffs contend, is appropriate as "an intermediate remedy to preserve assets until [the Florida Action] is resolved," because a receiver would "take charge of the corporation's assets and appropriately address the Plaintiffs' claims."[15]

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[11] *Id.* ¶¶ 24-27.
[12] *Id.* ¶¶ 30-32.
[13] *Id.* ¶ 19.
[14] Pls.' Br. at 2-3.
[15] *Id.* at 4-5.

In bringing their motion to dismiss, the Defendants assert that this action should be dismissed under Court of Chancery Rule 12(b)(2) for lack of personal jurisdiction, Court of Chancery Rule 12(b)(6) for failure to state a claim upon which relief can be granted, Court of Chancery Rule 12(b)(5) for improper service of process, and Court of Chancery Rule 12(b)(1) and Court of Chancery Rule 12(b)(6) because the Plaintiffs' claims are not ripe. Alternatively, the Defendants have moved to stay this action pending the completion of certain statutorily-mandated winding up procedures under the DGCL.[16]

The Defendants argue that the Company, through its board of directors, "is actively managing the winding up process and is still within the statutorily provided winding up period."[17] As a result, they contend that the Plaintiffs' ongoing claim in the Florida Action will be addressed by the Company once it "has made a final determination regarding its potential liability," at which time "it will determine what amount should be set aside and request that the Court approve that amount . . . ."[18] Because the Plaintiffs may then protect their interests in that proceeding, the Defendants argue that the Complaint fails to state a claim upon which relief can be granted. In addition, the Defendants contend that this Court lacks personal jurisdiction over the Individual Defendants. Finally, because of the

[16] Defs.' Mot. to Dismiss or Stay at 1.
[17] Defs.' Opening Br. in Supp. of Mot. to Dismiss ("Defs.' Br.") at 1.
[18] *Id.* at 2.

"Plaintiffs' obvious failure to undertake *any* factual investigation prior to filing the Complaint, as well as their failure to properly understand the relevant dissolution statutes," the Defendants also request that the Court award attorneys' fees and costs incurred in bringing the motion to dismiss.[19]

IV. ANALYSIS

A. *Motion to Dismiss for Lack of Personal Jurisdiction*

The Court first considers the Defendants' motion to dismiss for lack of personal jurisdiction as to the Individual Defendants under Court of Chancery Rule 12(b)(2) before reaching the motion to dismiss under Court of Chancery Rule 12(b)(6).[20]

On a motion to dismiss for lack of personal jurisdiction under Rule 12(b)(2), "the plaintiff bears the burden of showing a basis for the court's exercise of jurisdiction" over the defendant.[21] Because the Individual Defendants are nonresidents of Delaware, the Plaintiffs must demonstrate: "(1) a statutory basis for service of process; and (2) the requisite 'minimum contacts' with the forum to

[19] Defs.' Reply Br. in Supp. of Mot. to Dismiss at 5 (emphasis in original).
[20] *See Branson v. Exide Elecs. Corp.*, 625 A.2d 267, 269 (Del. 1993) ("[A] court's finding of personal jurisdiction is not only a condition precedent to a proper exercise of its own judicial authority, but it is determinative of the course of other litigation between the same parties. A court without personal jurisdiction has no power to dismiss a complaint for failure to state a claim.").
[21] *Werner v. Miller Tech. Mgmt., L.P.*, 831 A.2d 318, 326 (Del. Ch. 2003).

satisfy constitutional due process."[22] In deciding a motion to dismiss under Rule 12(b)(2), "the court may consider the pleadings, affidavits, and any discovery of record."[23] Because no evidentiary hearing has been held, the Plaintiffs "need only make a *prima facie* showing of personal jurisdiction . . . ."[24] Moreover, the record will be construed in the light most favorable to the Plaintiffs.[25]

The Plaintiffs contend that the Court has personal jurisdiction over the Individual Defendants under 10 *Del. C.* § 3114.[26] No other statutory basis for personal jurisdiction over those defendants has been asserted. Section 3114 subjects nonresident directors of a Delaware corporation to personal jurisdiction in this Court "in connection with suits directed against them for acts performed in their directorial capacities."[27] Delaware courts recognize § 3114 as authorizing service of process on a nonresident director "only where the cause of action is

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[22] *Fisk Ventures, LLC v. Segal*, 2008 WL 1961156, at *6 (Del. Ch. May 7, 2008); *see also Ruggiero v. FuturaGene, plc.*, 948 A.2d 1124, 1132 (Del. Ch. 2008) ("Delaware courts apply a two-step analysis to determine whether the exercise of personal jurisdiction over a nonresident is appropriate. First, the court must determine whether Delaware statutory law offers a means of exercising personal jurisdiction over the nonresident defendant. Second, after establishing a statutory basis for jurisdiction, the court must determine whether subjecting the nonresident to jurisdiction in Delaware violates the Due Process Clause of the Fourteenth Amendment.") (internal quotations and citations omitted).

[23] *Ryan v. Gifford*, 935 A.2d 258, 265 (Del. Ch. 2007).

[24] *Id.*; *see also Cornerstone Techs., LLC v. Conrad*, 2003 WL 1787959, at *3 (Del. Ch. Mar. 31, 2003) ("[W]hen no evidentiary hearing has been held, the plaintiffs' burden is a relatively light one.").

[25] *Cornerstone Techs., LLC*, 2003 WL 1787959, at *3.

[26] Compl. ¶¶ 3-6.

[27] *HMG/Courtland Props., Inc. v. Gray*, 729 A.2d 300, 305 (Del. Ch. 1999).

based on such an individual's breach of fiduciary duty . . . ."[28] More importantly, "the conduct alleged must have constituted a breach of fiduciary duty . . . for which the plaintiff has standing to sue—that is a duty which runs to the plaintiff either directly or derivatively."[29]

The Individual Defendants are current or former directors of Central Oil. The Complaint makes no allegation that the Individual Defendants breached any fiduciary duty. The Plaintiffs allege only that the claims raised in the Florida Action—pending at the time Central Oil dissolved—have not been paid or provided for by the Company or its board. By not alleging that the Individual Defendants breached any fiduciary duty—particularly, a fiduciary duty owed to the Plaintiffs for which they have standing to sue—the Plaintiffs fail to implicate the jurisdictional reach of § 3114. As a result, § 3114 does not provide a statutory basis for personal jurisdiction over the Individual Defendants. Indeed, the Plaintiffs' Answering Brief makes no argument as to why § 3114 provides personal jurisdiction over the Individual Defendants other than to conclude with no further support that "this Court has personal jurisdiction over the [I]ndividual [D]efendants, who were properly served . . . ."[30] Because personal jurisdiction

[28] *Ruggiero*, 948 A.2d at 1133; *see also Canadian Commercial Workers Indus. Pension Plan v. Alden*, 2006 WL 456786, at *11 (Del. Ch. Feb. 22, 2006) (describing narrow scope of § 3114 as applied in Delaware case law).
[29] *Lisa, S.A. v. Mayorga*, 2009 WL 1846308, at *5 (Del. Ch. June 22, 2009).
[30] Pls.' Br. at 1.

premised on § 3114 fails and the Plaintiffs do not assert any other basis for personal jurisdiction over the Individual Defendants, the Plaintiffs have not demonstrated a proper statutory basis for this Court to act substantively with respect to the claims against the Individuals Defendants.

Having determined that the Plaintiffs failed to demonstrate a proper statutory basis under which the Court may exercise personal jurisdiction over the Individual Defendants, the Complaint must be dismissed as to those defendants for lack of personal jurisdiction.[31]

B. *Motion to Dismiss for Failure to State a Claim*

The Court now considers Central Oil's motion to dismiss under Court of Chancery Rule 12(b)(6).[32]

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[31] The Defendants also seek to dismiss the Complaint as to the Individual Defendants under Court of Chancery Rule 12(b)(5) for insufficient service of process and under Rule 12(b)(6) for failure to state a claim upon which relief can be granted. Because the Court grants the motion to dismiss as to the Individual Defendants under Rule 12(b)(2) for lack of personal jurisdiction, the Court does not decide whether the Complaint should be dismissed as to the Individual Defendants on other grounds. The Court notes, however, that by only asserting personal jurisdiction over and a statutory basis for service of process upon the Individual Defendants under 10 *Del. C.* § 3114, Court of Chancery Rule 4 requires the Plaintiffs to "file a return of service forthwith after effectuation of said service." Ct. Ch. R. 4(dc)(2)(a). Based on the current record, no such filing has been made.

[32] At this juncture, "matters outside the pleadings should [generally] not be considered in ruling on a motion to dismiss." *In re Santa Fe Pac. Corp. S'holder Litig.*, 669 A.2d 59, 68 (Del. 1995). When deciding a motion to dismiss under Court of Chancery Rule 12(b)(6), however, the Court may consider documents both integral to and incorporated into the complaint, and documents not relied upon to prove the truth of their contents. *Orman v. Cullman*, 794 A.2d 5, 15-16 (Del. Ch. 2002).

On a Rule 12(b)(6) motion to dismiss for failure to state a claim upon which relief can be granted, dismissal is only appropriate where "it appears with reasonable certainty that the plaintiff could not prevail on any set of facts that can be inferred from the pleadings."[33] The Court must assume the truthfulness of all well-pleaded allegations of fact in the Complaint and accept as true all inferences that can reasonably be drawn in favor of the Plaintiffs from those well-pleaded allegations of fact.[34] The Court need not, however, "blindly accept as true all allegations, nor must it draw all inferences from them in the plaintiff's favor unless they are reasonable inferences."[35] Conclusory allegations unsupported by specific factual allegations will not be accepted as true.[36] The Plaintiffs are "not required to plead evidence"—instead, the Plaintiffs "need only state a claim upon which relief can be granted" to survive a motion to dismiss under Rule 12(b)(6).[37]

1. "Restoration of Corporate Existence"

In Count I of the Complaint, the Plaintiffs request that this Court nullify Central Oil's certificate of dissolution and restore its corporate existence "until the unfinished business of the corporation (i.e., the judgment [in the Florida Action])

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[33] *Canadian Commercial Workers Indus. Pension Plan*, 2006 WL 456786, at *3.
[34] *Id.*
[35] *Blue Chip Capital Fund II Ltd. P'ship v. Tubergen*, 906 A.2d 827, 832 (Del. Ch. 2006).
[36] *Corporate Prop. Assocs. 14 Inc. v. CHR Holding Corp.*, 2008 WL 963048, at *3 (Del. Ch. Apr. 10, 2008); *Werner*, 831 A.2d at 327.
[37] *Balin v. Amerimar Realty Co.*, 1993 WL 542452, at *4 (Del. Ch. Dec. 23, 1993).

has been resolved."[38] Although Central Oil formally dissolved under 8 *Del. C.* § 275 on June 6, 2007, the Plaintiffs had commenced the Florida Action before the Company's dissolution—the complaint in that action was filed on March 30, 2005.[39]

Section 278 of the DGCL specifically extends the corporate existence of a dissolved corporation for three years—subject to further extension at the discretion of the Court—so that the corporation may wind up its affairs.[40] More importantly, "[a] further period of implicit corporate existence, of indefinite duration, is imparted by the statutory directive that no action for or against the corporation shall abate by reason of the dissolution of the corporation . . . ."[41] Accordingly, because the Florida Action was filed before Central Oil dissolved, the Company's existence as a body corporate will not end before the conclusion of that action.[42] Thus, although the Plaintiffs request the restoration of Central Oil's corporate

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[38] Compl. ¶ 27.
[39] *Id.* ¶¶ 11-12.
[40] *City Investing Co. Liquidating Trust v. Cont'l Cas. Co.*, 624 A.2d 1191, 1195 (Del. 1993).
[41] *Id.*; *see also Rosenbloom v. Esso Virgin Islands, Inc.*, 766 A.2d 451, 458 (Del. 2000); *In re Transamerica Airlines, Inc.*, 2007 WL 1555734, at *18 (Del. Ch. May 25, 2007); *In re RegO Co.*, 623 A.2d 92, 95 (Del. Ch. 1992).
[42] Under 8 *Del. C.* § 278, "[w]ith respect to any action, suit or proceeding begun by or against the corporation either prior to or within 3 years after the date of its expiration or dissolution, the action shall not abate by reason of the dissolution of the corporation." *Id.* The Plaintiffs recognize this point in the Complaint. *See* Compl. ¶ 18 ("[The Florida Action] did not abate by virtue of the dissolution or purported dissolution of Central Oil."). Section 278 further provides that "the corporation shall, solely for the purpose of such action, suit or proceeding, be continued as a body corporate beyond the 3-year period and until any judgments, orders or decrees therein shall be fully executed, without the necessity for any special direction to that effect by the Court of Chancery." 8 *Del. C.* § 278.

existence, the Plaintiffs ignore that they are seeking restoration of a corporation which already continues to exist, albeit in a limited state. For that reason, Count I of the Complaint must be dismissed for failure to state a claim upon which relief can be granted—Central Oil's corporate existence will continue at least until the conclusion of the Florida Action.

2. Appointment of a Receiver

Through Count II of the Complaint, the Plaintiffs seek the appointment of a receiver to manage the affairs of Central Oil under 8 *Del. C.* § 279. The Plaintiffs contend that their allegations, if true, provide good cause for the appointment of "an independent receiver, *i.e.*, one who is not a former director or officer of Central Oil,"[43] who would have the authority to conclude the unfinished business of Central Oil.

Section 279 empowers creditors, stockholders, and directors of a dissolved corporation, "or any other person who shows good cause," to petition the Court for the appointment of a receiver to manage the dissolved corporation's affairs.[44] Any party petitioning for the appointment of a receiver under § 279 bears the burden of persuading the Court that good cause exists.[45]

[43] Compl. ¶ 32.
[44] 8 *Del. C.* § 279.
[45] *In re OKC Corp.*, 1982 WL 17809, at *2-*3 (Del. Ch. June 22, 1982).

In 8 *Del. C.* §§ 280-82, the DGCL requires first that a corporation select one of two wind up procedures upon dissolution, and then that the corporation follow the selected procedure in winding up its affairs.[46] "Delaware case law recognizes . . . that a director breaches her fiduciary duty to creditors if she fails to comply with [those] dissolution procedures . . . ."[47] Delaware courts further recognize, however, that when a corporation dissolves, "the statutory duty and right of the directors to wind up the affairs of the company is not interfered with by the court, except for reason shown, or by consent of the directors."[48]

The Plaintiffs make no allegation that any reason exists to interfere with Central Oil's directors as they continue to wind up the affairs of the Company. The Plaintiffs do not allege that the directors are winding up Central Oil in contravention of the DGCL or that they have abandoned their winding up efforts. The Plaintiffs make only the bare assertion that "Central Oil did not properly wind up its affairs . . . ."[49] That statement alone without supporting factual allegations is insufficient for this Court to override the power reserved to the directors of Central Oil by the DGCL.

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[46] *In re Transamerica Airlines, Inc.*, 2006 WL 587846, at *7 (Del. Ch. Feb. 28, 2006).
[47] *Id.*
[48] *Cahall v. Lofland*, 107 A. 769, 769 (Del. Ch. 1919).
[49] Compl. ¶ 26.

Thus, because the Plaintiffs make no allegations relevant to good cause in this context, their request to appoint a receiver in Count II must be dismissed for failure to state a claim upon which relief can be granted. There are no allegations in the Complaint that would allow the Court to exercise its discretion to appoint a receiver under § 279 and deny the directors the authority to wind up Central Oil's affairs.

C. *Request for Attorneys' Fees and Costs*

The Defendants argue for an award of attorneys' fees and costs in bringing their motion to dismiss. They contend that this motion "would have been unnecessary had Plaintiffs made any attempt to investigate, even on a cursory level, the facts and law before filing the Complaint, or had Plaintiffs agreed to a stay of this Action."[50] The Defendants offer various grounds that they assert are sufficient for the Court to order the "extraordinary measure" of awarding attorneys' fees.[51]

[50] Defs.' Br. at 5.

[51] *Id.* at 28. The Defendants argue that the Court should award fees because: "(1) the Complaint as filed does not make sense and does not comply with Court of Chancery filing rules, which makes it difficult for Defendants to even ascertain the intended parties and claims; (2) Plaintiffs apparently completed little to no factual investigation and their counsel filed this Complaint based on incorrect facts and a mistaken understanding of the relevant dissolution statutes; and (3) Defendants' counsel's repeated attempts to clarify the scope of the Complaint, obtain copies of the Exhibits, or otherwise obtain information were largely unsuccessful, thus increasing Defendants' costs of bringing this Motion." *Id.*

In considering the Defendants' request, the Court notes that typically litigants must pay their own attorneys' fees and expenses under the American Rule.[52] Only rarely do Delaware courts deviate from this standard.[53] Nevertheless, a well-established equitable exception to the American Rule is the bad faith exception found, for example, "where parties have unnecessarily prolonged or delayed litigation, falsified records or knowingly asserted frivolous claims."[54] The party invoking the bad faith exception bears the strict burden of producing clear evidence of bad-faith conduct by the opposing party—either that the litigation was brought in bad faith or that the party litigated the action itself in bad faith.[55] Generally, a party acting merely under an incorrect perception of its legal rights does not engage in bad-faith conduct;[56] rather, the party's conduct must demonstrate "an abuse of the judicial process and clearly evidence[] bad faith."[57]

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[52] *Goodrich v. E.F. Hutton Group, Inc.*, 681 A.2d 1039, 1043-44 (Del. 1996).

[53] *See Weinberger v. UOP, Inc.*, 517 A.2d 653, 654 (Del. Ch. 1986) (noting that "Delaware courts have been very cautious in granting exceptions" to the American Rule).

[54] *Johnston v. Arbitrium (Cayman Islands) Handels AG*, 720 A.2d 542, 546 (Del. 1998) (citations omitted).

[55] *Beck v. Atl. Coast PLC*, 868 A.2d 840, 850-51 (Del. Ch. 2005); *see also Paradee v. Paradee*, 2010 WL 3959604, at *16 (Del. Ch. Oct. 5, 2010) (awarding attorneys' fees for egregious pre-litigation conduct).

[56] *Mother African Union First Colored Methodist Protestant Church v. Conference of African Union First Colored Methodist Protestant Church*, 1992 WL 83518, at *10 (Del. Ch. Apr. 22, 1992).

[57] *In re SS&C Techs., Inc. S'holders Litig.*, 948 A.2d 1140, 1151 (Del. Ch. 2008); *see also Kaung v. Cole Nat'l Corp.*, 884 A.2d 500, 506 (Del. 2005) ("The purpose of this so-called bad faith exception is to deter abusive litigation in the future, thereby avoiding harassment and protecting the integrity of the judicial process.") (internal quotations omitted); *Montgomery Cellular Holding Co., Inc. v. Dobler*, 880 A.2d 206, 227 (Del. 2005) ("The bad faith exception is applied

Although the Court has broad discretion,[58] it will not award attorneys' fees lightly under this exception.[59]

Ultimately, the Court is not persuaded that the Plaintiffs' conduct—either in filing or litigating this action—amounts to bad faith sufficient for the Court to shift fees in favor of the Defendants. Although the Plaintiffs could have been more responsive to the Defendants' queries for clarification and the Plaintiffs' filings created confusion, there is no clear record of conduct evidencing abuse of the judicial process contemplated by the bad faith exception. Indeed, the Plaintiffs have a legitimate concern that Central Oil, a dissolved corporation, will lack sufficient assets to satisfy any judgment rendered in the Florida Action. For that reason, while this unsuccessful action was perhaps based on a misguided understanding of the DGCL, it was a legitimate attempt by the Plaintiffs to protect their legal rights. Without more, this Court will not award fees to the Defendants under the bad faith exception. Accordingly, the Defendants' request for attorneys' fees and costs in bringing this motion is denied.

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in 'extraordinary circumstances' as a tool to deter abusive litigation and to protect the integrity of the judicial process.").

[58] *SS&C Techs., Inc.*, 948 A.2d at 1149.

[59] *Nagy v. Bistricer*, 770 A.2d 43, 64 (Del. Ch. 2000).

V. CONCLUSION

For the foregoing reasons, the Defendants' motion to dismiss is granted as to the Individual Defendants under Court of Chancery Rule 12(b)(2) and as to Central Oil under Court of Chancery Rule 12(b)(6). The Defendants' request for an award of attorneys' fees and costs in bringing this motion is denied.

In addition, even though neither Defendant F.L. Shafer nor her estate was represented by counsel in this matter and no motion to dismiss was filed on her behalf, the Court will nevertheless dismiss all claims against her and, thus, the Complaint in its entirety.[60]

An implementing order will be entered.

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[60] The Plaintiffs do not allege that F.L. Shafer breached any fiduciary duty, much less a fiduciary duty owed to the Plaintiffs. Moreover, the only asserted statutory basis for jurisdiction and proper service of process over Ms. Shafer is under 10 *Del. C.* § 3114—a basis considered and rejected by the Court as to the Individual Defendants in Part IV.A *supra*. It is worth noting that this Court "interpreted the absence of any language in Section 3114 providing for substituted service upon the personal representative of a deceased director as requiring the conclusion that this section could not be applied to nonresident directors who die before suit or service of process is commenced." *Carlton Invs. v. TLC Beatrice Int'l Holdings, Inc.*, 1995 WL 694397, at *7 (Del. Ch. Nov. 21, 1995) (citing *Tabas v. Crosby*, 444 A.2d 250, 252-53 (Del. Ch. 1982)). The Court did recognize, however, that a plaintiff may properly serve process upon a deceased director's estate "under [12 *Del. C.* §] 1571 *via* the Section 3114 provisions that would have permitted substituted service of process on" the deceased director before her death. *Id.* at *8. Here, the Plaintiffs do not rely upon § 1571 and the record lacks any indication that the Plaintiffs attempted service of process on Ms. Shafer's estate. Accordingly, no valid reason exists to dismiss this action as to all other defendants and leave it open only as to Ms. Shafer or her estate.