IN THE COURT OF CHANCERY OF THE STATE OF DELAWARE

NORTHSIDE COMMUNITY BANK, Plaintiff, v. MATTHEW A. FRIEDMAN; HEATHER D. FRIEDMAN; ARCHIE MANAGER, INC.; ARCHIE GP, INC.; and GREGG E. STRELLIS, Defendants.	)	*Civil Action No. 8405-VCG*

MEMORANDUM OPINION

Date Submitted: August 9, 2013
Date Decided: November 20, 2013

David M. Powlen and Kevin G. Collins, of Barnes & Thornburg LLP, Wilmington, Delaware; Of Counsel: Vincent P. Schmeltz, of Barnes & Thornburg LLP, Chicago, Illinois, Attorneys for the Plaintiff.

Michael Joyce and Amy Evans, of Cross & Simon, LLC, Attorneys for the Defendants.

GLASSCOCK, Vice Chancellor

This matter involves the allegation that two of the individual Defendants—guarantors of a loan made by the Plaintiff bank, and in anticipation of the inevitable default on that loan—created Delaware entities, as part of a scheme to fraudulently transfer their assets beyond the reach of the bank, and that they effectuated those transfers with the help of the third individual Defendant, who they enlisted as a fiduciary of the entities and facilitator of the fraudulent transfers. The Defendants have moved to dismiss the Complaint, alleging lack of personal jurisdiction. I find that the facts alleged are sufficient to extend jurisdiction over the individual Defendants and two Illinois trusts alleged to have knowingly received assets fraudulently passed through the Delaware entities.

I. FACTS

A. The Loan

The following facts are taken from the Verified Complaint (the "Complaint"). On July 31, 2009, Plaintiff NorthSide Community Bank ("NorthSide") loaned $1,400,000 to 1550 MP Road, LLC ("MP Road") secured by real estate located at 1550 S. Mount Prospect Road, Des Plaines, Illinois (the "MP Property"), and personally guaranteed by Defendants Matthew Friedman and Heather Friedman, a married couple.[1] At that time, MP Road leased the MP Property to Teamster's Local Union 726 ("Local 726"), and used those rent

[1] Compl. ¶¶ 16-21.

payments to pay principal and interest payments on the NorthSide loan.[2] In August 2009, however, Local 726 liquidated and ceased paying rent payments to MP Road; as a result, MP Road was unable to make loan payments to NorthSide.[3] On July 31, 2010, MP Road failed to make a monthly payment on the NorthSide loan, and NorthSide accelerated the loan.[4]

B. Transfers to Archie Properties, LLC Series A through F

When the Friedmans learned that Local 726 would soon be liquidating—and therefore would not fulfill its obligations under the lease—the Friedmans transferred their assets into several corporate entities with the intent of shielding those assets from NorthSide.[5] The Complaint alleges three transfers that do not involve Delaware entities: a $75,000 transfer into a Bright Start College Fund for the Friedmans' minor daughter; a $75,000 transfer into a Bright Start College Fund for the Friedmans' minor son; and a $100,000 transfer into a Nationwide Life and Annuity Insurance Company account in Heather Friedman's name.[6]

From November 2009 through March 2010, the Friedmans transferred their remaining assets into Archie Properties, LLC ("Properties"), a Delaware LLC with

[2] *Id*. at ¶¶ 22-25.
[3] *Id*. at ¶ 25.
[4] *Id*. at ¶ 26.
[5] *Id*. at ¶ 37.
[6] *Id*. at ¶ 46.

membership interests divided in Series A through F.[7] Specifically, the Friedmans made the following transfers:

> - 910 South Crescent Land Trust, which held the Friedmans' Illinois residence, into Series A;[8]
> - The Friedmans' personal property, which was held in Archie Ventures LLP, into Series B;[9]
> - Approximately $372,282 in cash into Series D;[10]
> - Matthew Friedman's membership interest in 6 Deer Run Lane, LLC into Series E;[11] and
> - The Friedmans' time share property in Utah into Series F.[12]

The Friedmans retained a 100% membership interest in Series A. With respect to Series B, D, E, and F, the Friedmans transferred 99% of the membership interest into a Delaware limited partnership, Archie Ventures LP ("Ventures LP"), with the Friedmans retaining a 1% membership interest. The Friedmans appointed Archie Manager, Inc. ("Manager")—a Delaware corporation—manager of Properties.[13] The Friedmans held all 300 voting shares of stock in Manager. The Friedmans appointed yet another Delaware corporation, Archie GP, Inc. ("Archie GP"), general manager of Ventures LP; the Friedmans held all 300 shares of voting stock in Archie GP as well.[14] The Friedmans then transferred their 100% partnership interest in Ventures LP to the Archie Tenancy by the Entirety Trust (the "Archie

[7] *Id*. at ¶ 38.
[8] *Id*. at ¶ 40.
[9] *Id*. at ¶ 41.
[10] *Id*. at ¶ 43. Series C was left empty. *Id*. at ¶ 42.
[11] *Id*. at ¶ 44.
[12] *Id*. at ¶ 45.
[13] *Id*. at ¶¶ 49-50.
[14] *Id*. at ¶ 56.

Trust"), a trust formed in Illinois. The Friedmans gave their two minor children an approximately 42.6% interest in the Archie Trust by creating two additional Illinois trusts, the Minor A Trust Dated November 6, 2009 and the Minor B Trust Dated November 6, 2009 (collectively, the "Minors' Trusts").[15] The various interests created by the Friedmans after guaranteeing the 1550 MP Road loan are represented graphically in Figure I. All the Delaware entities were created in November 2009, *after* the Friedmans became guarantors of the MP Road loan on July 31, 2009.[16]

C. The Illinois Action and the Corporate Turnover

NorthSide obtained a judgment of $1,367,029 against the Friedmans on September 7, 2010 in Illinois state court.[17] On September 9, 2011, the Illinois court ordered the Friedmans to turn over their interests in the Archie Trust, Archie GP and Manager to NorthSide.[18] On January 23, 2012, the Friedmans executed assignments of their Manager and Archie GP stock certificates, representing 300 shares in each corporation. NorthSide then attempted to vote its interests to replace the directors in those entities, thereby gaining control of Properties Series A through F.[19] In response, the Friedmans informed NorthSide that a family

[15] *Id*. at ¶ 54.
[16] Pl.'s Br. in Opp'n Ex. B-E.
[17] Compl. ¶ 27.
[18] *Id*. at ¶ 58.
[19] *Id*. at ¶¶ 60-61.

friend—and the sole director of both corporations as of October 20, 2010[20]—Gregg Strellis, owned 600 shares of non-voting stock in each of Manager and Archie GP; and that those shares converted to 600 shares of voting stock upon the companies' change of control from the Friedmans to NorthSide in accordance with the following provision in both corporations' certificates of incorporation:

> Any issued and outstanding shares of the class of Common B stock shall automatically convert into issued and outstanding shares of the class of Common A stock, on the basis that each One (1) issued and outstanding share of Common B stock shall automatically convert into One (1) issued and outstanding share of Common A stock, upon any occurrence of the "Matthew A. Friedman and Heather D. Friedman Non-Ownership of Common A Stock Condition" (as such term is hereinafter defined.[21]

The court-ordered transfer sprang the trap: the Friedmans maintain that because NorthSide thereafter owned only 300 of the total 900 shares of voting stock outstanding in each corporation, it held a minority interest and could not remove Mr. Strellis from the boards.

NorthSide alleges twelve counts entitling it to relief. Count I alleges that the Friedmans fraudulently transferred assets into a Bright Start College Fund for their minor daughter; Count II alleges that the Friedmans fraudulently transferred assets into a Bright Start College Fund for their minor son; and Count III alleges that the Friedmans fraudulently transferred assets into a Nationwide Life and Annuity

[20] *Id*. at ¶¶ 70-71.
[21] *Id*. at ¶ 66.

Insurance Company account. Counts IV through VIII allege that the Friedmans fraudulently transferred assets into Properties Series A, B, D, E, and F. Counts IX and X allege that the Friedmans and the Minors' Trusts fraudulently transferred assets into the Minors' Trusts by granting those Trusts interests in Ventures LP. Count XI alleges that the Friedmans and Mr. Strellis fraudulently transferred interests in Manager and Archie GP by granting Mr. Strellis the "springing stock conversion" that diluted NorthSide's interests in those corporations.[22] Count XII seeks a declaratory judgment determining the composition of the boards of Manager and Archie GP pursuant to 8 *Del. C.* § 225, and invalidating the springing stock conversion.[23]

II. STANDARD OF REVIEW

The Defendants have moved to dismiss this action under Rule 12(b)(2) for lack of personal jurisdiction over Mr. Friedman, Mrs. Friedman, Mr. Strellis, and the Minors' Trusts. On a motion to dismiss for lack of personal jurisdiction, "the plaintiff bears the burden of establishing personal jurisdiction over the defendant."[24] Where the Court has not held an evidentiary hearing, the plaintiff

[22] *Id*. at ¶ 224.

[23] Because this 8 *Del. C.* § 225 claim is in rem, the jurisdictional issues discussed herein do not relate to this count. To the extent that the Motion to Dismiss applies to this count, it is denied.

[24] *Newspan, Inc. v. Hearthstone Funding Corp*., 1994 WL 198721, at *3 (Del. Ch. May 10, 1994). *See also Optimalcare, Inc., v. Hightower*, 1996 WL 417510, at *2 (Del. Ch. July 17, 1996) ("On a motion to dismiss for lack of personal jurisdiction, a plaintiff bears the burden of persuading the court that it has established a factual predicate for jurisdiction.").

must support allegations of personal jurisdiction with affirmative proof.[25] Proof of jurisdiction-conferring facts may consist of briefs, affidavits, other extrinsic evidence in the record, and allegations contained in a verified complaint where, as here, those allegations have not been rebutted by an opposing party's affidavits.[26] "In evaluating the record, I must draw reasonable inferences in favor of the plaintiff."[27] In considering this Motion, I must determine both whether there is a statutory basis for jurisdiction, and whether exercising jurisdiction here would be consistent with due process.[28]

III. ANALYSIS

The Defendants have moved to dismiss this action for lack of personal jurisdiction over the Friedmans, Mr. Strellis, and the Minors' Trusts.[29] In deciding this Motion, I consider the Plaintiff's Verified Complaint, the organizational documents of the Delaware entities at issue, and factual representations made by

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[25] *Id.* at *2.

[26] *See Hartsel v. Vanguard Grp., Inc.*, 2011 WL 2421003, at *7 (Del. Ch. June 15, 2011) ("Specifically, when a motion under Rule 12(b)(2) is presented without an evidentiary hearing, as it is here, the plaintiff's burden is to point to sufficient evidence in the record to support a prima facie case that jurisdictional facts exist to support the two elements it must prove. In doing so, the court is not limited to the pleadings and can consider affidavits, briefs of the parties, and the available results of discovery. Still, allegations regarding personal jurisdiction in a complaint are presumed true, unless contradicted by affidavit . . . ."); *Canadian Commercial Workers Industry Pension Plan v. Alden*, 2006 WL 456786, at *11, n.93 (Del Ch. Feb. 22, 2006) ("Later decisions of this Court have made clear that a plaintiff can, in fact, make the necessary prima facie showing using only the facts alleged in the complaint.").

[27] *Sample v. Morgan*, 935 A.2d 1046, 1056 (Del. Ch. 2007).

[28] *Carsanaro v. Bloodhound Technologies, Inc.*, 65 A.3d 618, 635 (Del. Ch. 2013).

[29] The Defendants have also moved to stay this action in favor of litigation in Illinois. That motion will be addressed separately.

counsel in their briefs and at oral argument.[30] Because I find that this Court has personal jurisdiction over Mr. and Mrs. Friedman pursuant to 10 *Del. C.*§ 3104 with respect to all claims except Counts I, II, and III, and has personal jurisdiction over Strellis and the Minors' Trusts under the conspiracy theory of jurisdiction, that motion is granted in part and denied in part.

1. The Friedmans

Mr. and Mrs. Friedman are residents of Illinois. They have never travelled to Delaware as adults and do not own real property in Delaware.[31] However, the Plaintiffs argue that this Court may exercise personal jurisdiction over the Friedmans pursuant to Delaware's long-arm statute, 10 *Del. C.*§ 3104. That statute reads in relevant part:

> (b) The following acts constitute legal presence within the State. Any person who commits any of the acts hereinafter enumerated thereby submits to the jurisdiction of the Delaware courts.
> (c) As to a cause of action brought by any person arising from any of the acts enumerated in this section, a court may exercise personal jurisdiction over any nonresident, or a personal representative, who in person or through an agent:
> (1) Transacts any business or performs any character of work or service in the State . . . .[32]

The Plaintiff argues that the Friedmans created Delaware corporate entities "[k]nowing that the sole tenant and source of income for the Mount Prospect Road

[30] *See supra* note 26.
[31] Defs.' Op. Br. at 6.
[32] 10 *Del. C.* § 3104(b)-(c)(1).

Property, the Local 726, had been placed into trusteeship and would no longer be making rent payments," with the purpose of fraudulently transferring their assets out of NorthSide's reach.[33] Properties, Ventures LP, Archie GP and Manager are all entities created in Delaware. The Complaint alleges that these entities were created by the Friedmans as part of a scheme to fraudulently transfer the Friedmans' assets. Thus, the Plaintiff submits that the acts of (1) forming Properties in Delaware; (2) with the intent to fraudulently transfer assets into Properties Series A through F; and (3) forming Ventures LP in Delaware; (4) with the intent to fraudulently transfer partnership interests in Ventures LP into the Minors' Trusts; and (5) incorporating Manager and Archie GP in Delaware with the intent to further the fraudulent scheme are sufficient to constitute the transaction of business in Delaware under the long-arm statute.

This Court has previously determined that "[m]aking a corporate filing with the Secretary of State constitutes the transaction of business within Delaware for purposes of Section 3104(c)(1)."[34] The Defendants, however, argue that the

[33] Pl.'s Br. in Opp'n at 15.

[34] *Microsoft Corp. v. Amphus, Inc.*, 2013 WL 5899003, at *9 (Del. Ch. Oct. 31, 2013) ("It is settled Delaware law that the formation of a Delaware entity constitutes a 'transaction of business' within the meaning of Section 3104(c)(1), if the formation is done as part of a wrongful scheme."); *id.* at *10 (finding personal jurisdiction over a defendant who "proposed the creation" and "cho[se] to induce" the creation of a Delaware entity); *Carsanaro*, 65 A.3d at 635; *Matthew v. Fläkt Woods Grp. SA*, 56 A.3d 1023, 1027-28 (Del. 2012), reargument denied (Dec. 21, 2012) ("Filing a certificate of cancellation is the transaction of business in Delaware within the meaning of § 3104(c)(1)."); *Sample v. Morgan*, 935 A.2d 1046, 1057 (Del. Ch. 2007)

Complaint is insufficient in this regard; they point to language in the Complaint stating that "[w]ith [Plaintiff's agent] *Mr. Stern's* assistance, during the period between approximately November 2009 and March 2010, the Friedmans' assets were transferred into several series Delaware limited liability companies, known as Archie Properties, LLC Series A through F."[35] The Defendants then turn to the Properties certificate of formation and the Manager certificate of incorporation, which are both signed by Lindsey Markus, and argue that the Plaintiff has not sufficiently alleged that Ms. Markus (rather than Mr. Stern) was acting as the Friedmans' agent.[36] Plaintiff counsel represented at oral argument that Ms. Markus is an attorney at Mr. Stern's former law firm.[37] I find the allegations of the Complaint sufficient to make a *prima facie* case that Delaware entities were created on the Friedmans' behalf by their agent. Since these filings, together with the transfer of assets into Properties and out of Ventures, constitute business transactions attributable to the Friedmans under Section 3104, I find that the facts averred are sufficient for this Court to exercise jurisdiction over the Friedmans with respect to at least some of the Plaintiff's claims.

(holding that where a party prepared and sent a certificate of amendment to be filed in Delaware, that party "directly transacted business in Delaware for purposes of § 3104(c)(1)").

[35] Compl. ¶ 38.

[36] Pl.'s Br. in Opp'n Ex. E; *id.* Ex. C. I note that Mr. Friedman signed the Ventures LP Certificate of Limited Partnership and the Archie GP Certificate of Incorporation. *Id.* Ex. D; *id.* Ex. B.

[37] Oral Arg. Tr. 33:4-8.

However, the Defendants correctly point out that in order for this Court to exercise jurisdiction over the specific Counts alleged in the Complaint, those claims must *arise out of* the forum transactions, *i.e.* the conduct forming the basis for jurisdiction under the long-arm statute.[38] I therefore consider the Counts separately.

A. Counts I, II, and III

Counts I, II, and III allege fraudulent transfers of cash into non-Delaware entities, namely into college funds and an insurance policy. The Plaintiff has not identified any forum transactions with respect to these claims. Those transfers did not "arise out of" the formation of, or the transfer of assets into or out of, any Delaware corporate entities. This Court therefore cannot exercise jurisdiction over the Friedmans with respect to those claims, pursuant to the long-arm statute.

B. Counts IV, V, VI, VII, and VIII

Counts IV through VIII allege that the Friedmans fraudulently transferred certain assets into Properties Series A, B, D, E, and F. The forum transactions with respect to these claims include (1) the formation of the Delaware LLC by the Friedmans' agent, Ms. Markus, and (2) the transfer of assets into that LLC. These

[38] 10 *Del. C.* § 3104(c) ("As to a cause of action brought by any person *arising from any of the acts enumerated* in this section, a court may exercise personal jurisdiction over any nonresident . . . .") (emphasis added); Defs.' Reply Br. at 2.

Counts clearly arise out of the forum transactions here. Thus, the long-arm statute confers jurisdiction over these claims.

C. Counts IX and X

Counts IX and X allege that the Friedmans fraudulently transferred interests in Ventures LP into two non-Delaware trusts. The forum transactions with respect to these claims include (1) the creation of the Delaware LP and (2) the transfer of membership interests in the LP. These two forum transactions give rise to Counts IX and X. The Friedmans are therefore subject to jurisdiction with respect to these claims under the long-arm statute.

D. Counts XI and XII

Finally, Counts XI and XII allege that the springing stock conversions in Manager and Archie GP granted to Mr. Strellis constituted fraudulent transfers. The forum transactions with respect to this claim are the creation of two Delaware corporations that include in their certificates of incorporation mechanisms whereby the Friedmans could prevent future creditors from gaining control of the corporations, via a fraudulent transfer of stock to Strellis. The claim that those mechanisms constitute fraudulent transfers arises out of the creation of those mechanisms, and therefore this Court also has jurisdiction over these claims under the long-arm statute.

Having found that Section 3104(c)(1) confers jurisdiction over the Freidmans with respect to the Counts noted above, I also find that exercising such jurisdiction does not offend due process. In *Papendick v. Bosch*, our Supreme Court explained that:

> [The defendant German corporation] RB came into the State of Delaware to create, under the Delaware Corporation Law, a subsidiary corporation for the purpose of implementing its contract with B-W and accomplishing its acquisition of B-W stock. RB utilized the benefits and advantages of Delaware's Corporation Law for the creation of RBNA to be the vehicle for channeling to B-W the purchase money for the B-W stock and for becoming the recipient of the B-W stock. . . . We conclude that RB's ownership of RBNA stock was the result of RB's purposeful activity in Delaware as an integral component of its total transaction with B-W to which the plaintiff's instant cause of action relates.[39]

The Court further expounded:

> We do not believe that the *International Shoe* "minimum contact" due process standards were intended to deprive Delaware courts of jurisdiction by permitting an alien corporation to come into this State to create a Delaware corporate subsidiary for the purpose of implementing a contract under the protection of and pursuant to powers granted by the laws of Delaware, and then be heard to say, in a suit arising from the very contract which the subsidiary was created to implement, that the only contact between it and Delaware is the "mere" ownership of stock of the subsidiary.[40]

For similar reasons, I find that due process does not prevent this Court from deciding claims involving the formation of, and subsequent fraudulent transfer of assets into and membership interests out of, Delaware corporate entities.

[39] *Papendick v. Bosch*, 410 A.2d 148, 152 (Del. 1979).
[40] *Id.*

Assuming, as NorthSide has averred, that the Friedmans created four separate Delaware entities, designing to use those entities to defraud creditors, the Friedmans cannot be surprised by being haled into a Delaware Court to answer therefor. As a result, due process is not offended by my exercise of jurisdiction here.

2. Strellis

The Plaintiff asserts three bases for exercising personal jurisdiction over Mr. Strellis: Strellis is subject to jurisdiction in this court under 10 *Del. C.* § 3114, the director consent statute; Strellis is subject to jurisdiction under 6 *Del. C.* § 18-109, the implied consent statute; or Strellis is subject to jurisdiction under the conspiracy theory of jurisdiction. Because I find that this Court has jurisdiction over Mr. Strellis under the conspiracy theory of jurisdiction, I need not determine whether the other bases asserted by the Plaintiff would also be sufficient.[41]

The conspiracy theory of jurisdiction is a basis for asserting jurisdiction under the due process clause.[42] As articulated in *Istituto Bancario Italiano SpA v. Hunter Engineering Co., Inc.*, the conspiracy theory of jurisdiction holds that:

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[41] *See In re Mobilactive Media, LLC*, 2013 WL 297950, at *28 (Del. Ch. Jan. 25, 2013) (explaining that "[t]o establish personal jurisdiction over [the defendant], however, [the plaintiff] need only succeed on one of these theories," and analyzing only "[t]he most compelling of the five theories" asserted).

[42] *See Istituto Bancario Italiano SpA v. Hunter Eng'g Co., Inc.*, 449 A.2d 210, 225 (Del. 1982) ("We believe a strict test, modeled after the ones used in cases which have previously recognized the conspiracy theory of jurisdiction, withstands due process scrutiny. . . . Thus, a defendant who has so voluntarily participated in a conspiracy with knowledge of its acts in or effects in the

> [A] conspirator who is absent from the forum state is subject to the jurisdiction of the court, assuming he is properly served under state law, if the plaintiff can make a factual showing that: (1) a conspiracy to defraud existed; (2) the defendant was a member of that conspiracy; (3) a substantial act or substantial effect in furtherance of the conspiracy occurred in the forum state; (4) the defendant knew or had reason to know of the act in the forum state or that acts outside the forum state would have an effect in the forum state; and (5) the act in, or effect on, the forum state was a direct and foreseeable result of the conduct in furtherance of the conspiracy.[43]

At the outset, I reject the Defendants' contention that "[Northside] makes no allegations as to a conspiracy, and provides no affidavit or other material to support that Mr. Strellis conspired, agreed or in any way knew or voluntarily participated in a conspiracy to defraud."[44] "When assessing the first two *Istituto Bancario* factors, the Court focuses on the substance instead of the form of the plaintiff's allegations," and "allegations supporting a conspiracy theory of jurisdiction need not be framed as civil conspiracy in the Complaint;"[45] an

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forum state can be said to have purposefully availed himself of the privilege of conducting activities in the forum state, thereby fairly invoking the benefits and burdens of its laws.").

[43] *Id.*

[44] Defs.' Reply Br. at 7.

[45] *Matthew v. Laudamiel*, 2012 WL 605589, at *7 (Del. Ch. Feb. 21, 2012). *See also Carsanaro v. Bloodhound Technologies, Inc.*, 65 A.3d 618, 635 (Del. Ch. 2013) (finding personal jurisdiction over defendants under the conspiracy theory of jurisdiction, where the plaintiff had not alleged counts for civil conspiracy or aiding and abetting breach of fiduciary duty, but the complaint alleged facts indicating that there was "a plan to secure the vast bulk of [the nominal defendant company's] value by issuing preferred stock to their funds on unfairly advantageous terms"); *Benihana of Tokyo, Inc. v. Benihana, Inc.*, 2005 WL 583828, at *7 (Del. Ch. Feb. 4, 2005) (finding that plaintiffs had satisfactorily plead facts to indicate that a conspiracy had occurred, despite alleging an aiding and abetting claim rather than a civil conspiracy claim in the complaint, and stating that "whether termed 'aiding and abetting' or 'conspiracy,' [the plaintiff] has, at the very least, sufficiently pled the elements of civil conspiracy to support use of the conspiracy theory of personal jurisdiction").

alternative rule would involve "mere hair-splitting and [would] contravene[] the equitable principle of looking to the substance rather than to the form."[46] Here, while the Plaintiff does not state a count for recovery based on civil conspiracy in its Complaint, it sufficiently alleges facts to support an inference that the elements of conspiracy are satisfied.[47] The Complaint states that "the Friedmans have engaged in a massive scheme to transfer their assets into a labyrinthine group of entities;"[48] "[t]he sole purpose of the stock conversion provisions in the Corporations' Certificates of Incorporation was to defeat any turnover order entered by a court having jurisdiction over the Friedmans, by reducing the creditor's control of the Corporations without any consideration being given or other action taken on their part;"[49] and the springing stock conversion granted to Mr. Strellis "was made without receiving reasonably equivalent value from Mr. Strellis for the transfer . . . ."[50] Thus, the essence of the Plaintiff's claim is that the Friedmans and Strellis conspired to shield the Friedmans' assets from NorthSide, by means of a fraudulent transfer of a controlling interest in the two Delaware

[46] *Benihana of Tokyo, Inc.*, 2005 WL 583828, at *7.
[47] *See id.* at *7, n.33 ("The elements of civil conspiracy are: (1) A confederation or combination of two or more persons; (2) An unlawful act done in furtherance of the conspiracy; and (3) Actual damages."). Here, the Plaintiff has alleged that more than two individuals—the Friedmans and Strellis—engaged in activity to further unlawful behavior—the fraudulent transfer of the Friedmans' assets out of the reach of creditors.
[48] Compl. ¶ 2.
[49] *Id.* ¶ 72.
[50] *Id.* ¶ 227.

entities from the Friedmans to a corporate fiduciary, Strellis.[51] The first two elements of the theory articulated above—the existence of a conspiracy and defendants' participation therein—are therefore satisfied. Likewise, it is clear that the fourth and fifth elements—that Strellis had reason to know that the entities were incorporated in Delaware, and that those acts of incorporation were foreseeable acts in furtherance of the conspiracy—are also satisfied, since Strellis not only received non-voting shares in the entities as part of the scheme, but *became a director of the Delaware corporations* themselves.[52] Strellis was therefore on notice that Delaware courts might exercise jurisdiction over him with respect to claims involving these entities.

In addition, I have already determined above that a substantial act in furtherance of the conspiracy—with respect to the Counts asserted against Strellis, the incorporation of two corporations—occurred in Delaware, and that such acts served as adequate bases to assert jurisdiction over the Friedmans. As noted above, those corporations included the springing stock provision in their certificates of incorporation, which form the basis for the claims asserted against

[51] The Plaintiff asserts that "Mr. Strellis' participation in the conspiracy is further demonstrated by his failure to maintain the Corporations' charters, evidencing the individual defendants' intent to use the Delaware entities and the law of this State to shield their assets from NorthSide." Pl.'s Br. in Opp'n at 22. Because I find that other facts alleged in the Complaint are sufficient to infer that a conspiracy was committed, I need not decide whether this argument has merit.
[52] Compl. ¶ 70.

Strellis. All five elements of the conspiracy theory of jurisdiction as articulated in *Istituto Bancario Italiano* are therefore satisfied here.

Finally, our Supreme Court made clear in *Matthew v. Fläkt Woods Group SA* that even where the requirements of due process are met, the Court must first determine whether a conspirator-defendant is subject to personal jurisdiction under Delaware's long-arm statute before jurisdiction attaches.[53] However, where "alleged co-conspirators transact[] business in Delaware," they are "subject to personal jurisdiction under the long arm statute."[54] Such is the case for Strellis here, as I determined above that the Friedmans, Strellis's alleged co-conspirators, transacted business in Delaware sufficient to justify my exercise of jurisdiction under the long-arm statute. It was the intent of the legislature that the long-arm statute be construed broadly so as to ensure that the courts of this state be granted jurisdiction to the limit provided by due process.[55] I therefore find that this Court has personal jurisdiction over Mr. Strellis under both the Delaware long-arm statute and under due process.

[53] *Matthew v. Fläkt Woods Grp. SA*, 56 A.3d 1023, 1027 (Del. 2012).
[54] *Id.* at 1028.
[55] *See Summit Investors II, L.P. v. Sechrist Indus., Inc.*, 2002 WL 31260989, at *4, n.12 (Del. Ch. Sept. 20, 2002) ("Delaware courts have held that Section 3104(c) confers jurisdiction to the maximum extent permitted by law.").

3. The Minors' Trusts

Finally, the Plaintiff argues that this Court has personal jurisdiction over the Minors' Trusts. In Counts IX and X, the Plaintiff alleges that the Friedmans fraudulently transferred, and the Minors' Trusts, via the sole trustee, Strellis, knowingly received, interests in Ventures LP, a Delaware limited partnership.

The Minors' Trusts were formed in Illinois and are therefore not Delaware entities. However, the Plaintiff argues that this Court has jurisdiction over the Minors' Trusts under the conspiracy theory of jurisdiction, suggesting that "[i]n his capacity as trustee, Mr. Strellis accepted transfers of the Friedmans' assets . . . to the Minor Trusts both prior to *and after* issuance of the [September 9, 2011 Illinois court order requiring the Friedmans to turn over their interests in the Delaware entities to NorthSide]" and that "[t]he jurisdiction-conferring act of forming the various Delaware entities . . . by the Friedmans can be attributed to the Minor Trusts and Mr. Strellis, as trustee and co-conspirator."[56]

As noted above, a non-resident co-conspirator transacts business in Delaware pursuant to the long-arm statute where its alleged co-conspirators transacted business in Delaware.[57] Because the Friedmans transacted business in Delaware when they formed Ventures LP and when they transferred partnership

[56] Pl.'s Br. in Opp'n at 23.
[57] *See Hercules Inc. v. Leu Trust and Banking (Bahamas) Ltd.*, 611 A.2d 476, 481 (Del. 1992) (holding that a co-conspirator acts as an agent for purposes of jurisdiction under 10 *Del. C.* § 3104).

interests out of that LP into the Trusts, such acts can be attributed to the Minors' Trusts as co-conspirators.

In addition, there is a sufficient showing that the factors articulated in *Istituto Bancario Italiano SpA* have been satisfied such that application of the conspiracy theory of jurisdiction will not offend due process here. As explained above, a conspiracy to defraud has been adequately alleged. The line of cases applying the conspiracy theory of jurisdiction to corporate entities does not distinguish between conspiratorial acts—or knowledge of such acts—by managers of the entity and by the entity itself.[58] Accordingly, the Minors' Trusts, via Strellis, the sole trustee of those trusts, participated in the conspiracy by accepting and maintaining assets of the Friedmans for the purpose of hiding those assets from creditors. Two forum acts—creation of Ventures LP, and transfer of partnership interests from that LP—occurred in Delaware, and Mr. Strellis, sole trustee of the transferees, knew or had reason to know that such acts occurred in Delaware. And finally, such acts were more than a direct and foreseeable result of the

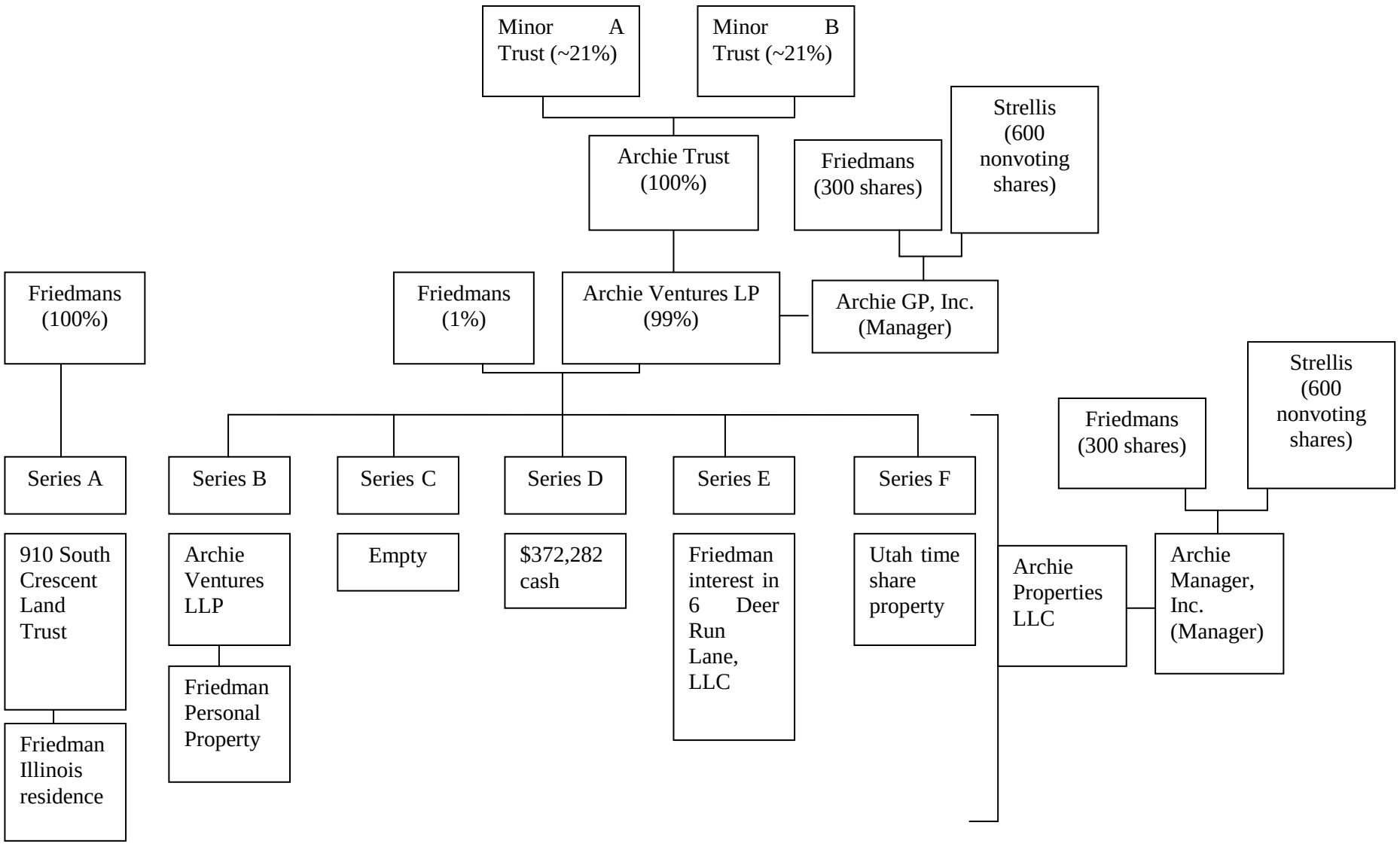
[58] *See Microsoft Corp. v. Amphus, Inc*., 2013 WL 5899003, at *14 (Del. Ch. Oct. 31, 2013) ("Because Fung managed and controlled PRP, everything known to Fung was known to PRP."); *id.* at *14, n.65 (citing *In re HealthSouth Corp. S'holders Litig.*, 845 A.2d 1096, 1108 n.22 (Del. Ch. 2003) for the "general rule that knowledge of a director or officer is imputed to the corporation"); *Matthew v. Fläkt Woods Grp. SA*, 56 A.3d 1023, 1028 (Del. 2012) (attributing knowledge of conspiratorial acts to a corporation itself); *Hercules Inc.*, 611 A.2d at 484 (finding that a banking corporation "had reason to know that acts outside Delaware would have an effect in Delaware"); *Dubroff v. Wren Holdings, LLC*, 2011 WL 5137175, at *14 (Del. Ch. Oct. 28, 2011) (attributing an individual defendant's knowledge of conspiratorial acts to an LLC, who together constituted a control group).

conspiracy—the creation of the LP, transfer of the interests by the Friedmans, and acceptance of the interests by the Minors' Trusts, form the gravamen of the conspiracy itself. I therefore find that I may exercise jurisdiction over the Minors' Trusts. However, if the Plaintiff is to proceed with claims against the Minors' Trusts, the beneficiaries of those Trusts must be represented in this litigation.

IV. CONCLUSION

As explained above, I find that this Court has personal jurisdiction over the Friedmans pursuant to 10 *Del. C.* § 3104 with respect to Counts IV, V, VI, VII, VIII, IX, X, XI, and XII. Counts I, II, and III are dismissed for lack of personal jurisdiction over the Friedmans with respect to those counts. Further, I find that, under the conspiracy theory of jurisdiction, this Court also has personal jurisdiction over Mr. Strellis with respect to Counts XI and XII, and over the Minors' Trusts with respect to Counts IX and X. The Defendants' Motion to Dismiss for Lack of Personal Jurisdiction is therefore granted in part and denied in part. The parties should provide a suitable order to effectuate this Memorandum Opinion, and should make the Court aware of the status of litigation in Illinois with regard to the Defendants' outstanding stay request.

Figure I.


Minor A Trust (~21%)
Minor B Trust (~21%)
Archie Trust (100%)
Friedmans (300 shares)
Strellis (600 nonvoting shares)
Friedmans (100%)
Friedmans (1%)
Archie Ventures LP (99%)
Archie GP, Inc. (Manager)
Friedmans (300 shares)
Strellis (600 nonvoting shares)
Series A
Series B
Series C
Series D
Series E
Series F
910 South Crescent Land Trust
Archie Ventures LLP
Empty
$372,282 cash
Friedman interest in 6 Deer Run Lane, LLC
Utah time share property
Archie Properties LLC
Archie Manager, Inc. (Manager)
Friedman Illinois residence
Friedman Personal Property