IN THE SUPERIOR COURT OF THE STATE OF DELAWARE

OMNICARE PHARMACY OF FLORIDA, LLC (d/b/a OMNICARE OF JACKSONVILLE, OMNICARE OF CENTRAL FLORIDA, and OMNICARE OF TAMPA),	C.A. No. N25C-01-233 KMM
Plaintiff,	
v.	
LAKE CITY NURSING, LLC d/b/a THE PALMS NURSING AND REHAB AT LAKE CITY (f/k/a AVALON HC & REHAB); ORANGE PARK NURSING, LLC d/b/a THE PALMS NURSING AND REHAB AT ORANGE PARK (f/k/a OAKVIEW HEALTHCARE); PORT ST. LUCIE NURSING, LLC d/b/a THE PALMS NURSING AND REHAB AT PORT ST. LUCIE (f/k/a EMERALD HEALTHCARE); WINTER HAVEN NURSING, LLC d/b/a THE PALMS NURSING AND REHAB AT WINTER HAVEN (f/k/a BRANDYWYNE HEALTHCARE CENTER); ORLANDO NURSING, LLC d/b/a THE PALMS NURSING AND REHAB AT ORLANDO (f/k/a TERRA VISTA REHAB); LTC CONSULTANTS OF CENTRAL FLORIDA LLC d/b/a PALMS MANAGEMENT, LILAC HEALTH GROUP LLC; LAKE CITY FL OPCO LLC; ORANGE PARK FL TWO OPCO LLC; PORT ST. LUCIE FL OPCO LLC; LAKE MARIAM FL OPCO LLC; and ORLANDO FL OPCO LLC,	
Defendants.	

Date Submitted: May 22, 2026
Date Decided: August 31, 2026

Upon Certain Defendants' Motion to Dismiss – **GRANTED**

MEMORANDUM OPINION AND ORDER

Alan C. Cardenas-Moreno, BALLARD SPAHR LLP, Wilmington, Delaware, *Attorney for Plaintiff*.

Sean T. O'Kelly, O'KELLY & O'ROURKE, LLC, Wilmington, Delaware, *Attorney for Defendants Lake City FL Opco LLC, Orange Park FL Two Opco LLC, Port St. Lucie FL Opco LLC, Lake Mariam FL Opco LLC, and Orlando FL Opco LLC*.

Miller, J.

I. INTRODUCTION

Omnicare Pharmacy of Florida, LLC ("Omnicare") entered into contracts with operators of long-term care facilities, under which Omnicare provided pharmaceutical goods and services. These operators, referred to as "Old Operators," failed to pay Omnicare's invoices over a four month period. Omnicare seeks recovery for the unpaid invoices from Old Operators.

In March 2023, each Old Operator entered into a contract to transfer the management and operations of the facilities to the moving defendants, referred to as "New Operators." New Operators took over operations and management of the facilities but refused to pay invoices that pre-dated the transaction.

Omnicare asserts claims of successor-in-interest and fraudulent transfer against New Operators to collect unpaid pre-transaction invoices. New Operators move to dismiss (the "Motion")[1] for lack of personal jurisdiction. Omnicare puts forward four theories to exercise personal jurisdiction over New Operators.

First, Omnicare argues that New Operators are bound by the forum selection clause in the contracts between Omnicare and Old Operators because New Operators accepted and retained benefits stemming from the contracts. Omnicare, however, fails to allege any facts that New Operators received the requisite benefit from the contracts. Therefore, Omnicare has failed to establish New Operators, non-

[1] New Operators' Motion to Dismiss Pursuant to Rule 12(b)(6) ("OB"), D.I. 22.

signatories to the Omnicare/Old Operators agreements, are bound by the forum selection clause.

Second, Omnicare argues personal jurisdiction based on a successor-liability theory due to New Operators being a mere continuation of Old Operators. But Omnicare alleged no facts to support this theory.

Third, Omnicare relies on the alleged fraudulent transfers to confer jurisdiction over New Operators. Omnicare, however, must still show that the long-arm statute has been satisfied, which it failed to do.

Fourth, Omnicare relies on an ancillary jurisdiction theory, asserting that because the court has jurisdiction over Old Operators and the same facts and wrongful conduct are alleged against both sets of defendants, jurisdiction may be exercised over New Operators. Omnicare misapplies ancillary jurisdiction. It does not confer personal jurisdiction over New Operators.

New Operators' Motion is **GRANTED**.

II. FACTUAL BACKGROUND[2]

A. *The parties*

Omnicare provides pharmaceutical goods and services to long-term care institutions and skilled nursing facilities.[3]

Old Operators are Florida limited liability companies that own and operate nursing and rehabilitation facilities in Florida.[4]

New Operators—Lake City FL Opco LLC, Orange Park FL Two Opco LLC, Port St. Lucie FL Opco LLC, Lake Mariam FL Opco LLC, and Orlando FL Opco LLC—are Florida limited liability companies that operate nursing and rehabilitation facilities in Florida.[5]

B. *The Omnicare/Old Operators relationship*

In October 2022, Old Operators entered into a series of Pharmacy Products and Services Agreements as well as Pharmacy Consultant Agreements with Omnicare (collectively the "Old Operators Agreement"). Under the Old Operators Agreement, Omnicare provided pharmacy products, services, and consulting to Old Operators.[6] Omnicare submitted monthly invoices to Old Operators, which they

[2] The facts are derived from the First Amended Complaint ("Compl.") (D.I. 14) and the documents it incorporates by reference.
[3] Compl. ¶ 4.
[4] *Id.* ¶¶ 1, 5-9, 14. Old Operators are Lake City Nursing, LLC, Orange Park Nursing, LLC, Part St. Lucie Nursing, LLC, Winter Haven Nursing, LLC, Orlando Nursing, LLC.
[5] *Id.* ¶¶ 12-16, 46-51.
[6] *Id.* ¶ 15.

were required to pay within 90 days.[7] Old Operators paid the October and November 2022 invoices within the 90-day period. The December 2022 to March 2023 invoices, which became due after the Old Operators/New Operators transaction, have not been paid.

C. *The change in management*

On March 31, 2023, each Old Operator entered into a Management and Operations Transfer Agreement with a corresponding New Operator, effective April 1, 2023 (collectively the "Transfer Agreement").[8] Old Operators held the "sole right to operate the Facilit[ies.]" The purpose of the agreement was to transfer those rights to the contract-counterparty New Operator and "ensure an orderly transition of operation of the Facilit[ies] and to transfer [each Old] Operator[s'] assets used in connection with the operation of the Facilit[ies.]" Transfer of the right to operate the Facilities[9] required, among other things, governmental approval to hold the requisite licenses under Florida law.[10] The Closing on each Facility was conditioned upon several things, including the corresponding New Operator obtaining and confirming receipt of notice from the Florida Department of Health or other applicable agency, that a license would be issued post-closing but effective as of the

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[7] *Id.* ¶ 17.
[8] *Id.* ¶¶ 46-51.
[9] Capitalized terms not defined herein have the meaning ascribed to them in the Transfer Agreement.
[10] New Operators' Reply in Support of Motion to Dismiss Pursuant to Rule 12(b)(6) ("RB"), D.I. 27, Ex. A (Transfer Agreement) § 1.

Closing date.[11] On the Closing Date, the Old Operator was required to transfer and assign patient trust funds,[12] identify assumed contracts,[13] and deliver a bill of sale for supplies and personal property being sold.

During the period between the date of the Transfer Agreement and Closing, the parties provided for a management period, beginning April 1, 2023 (the "Management Period Commencement Date") and concluding on the Closing date (the "Management Period").[14] During the Management Period, New Operators assumed management responsibilities of the transferred Facilities, but Old Operators "remain[ed] ultimately responsible for the daily operational decisions …" and "Old Operator[s] [had] the right to direct New Operator[s] on any administrative, business or management matters concerning the operation of the Facilit[ies] during the Management Period."[15] New Operators were required to arrange for the provision of "bookkeeping, accounting, and administrative functions, including, … (iv) Processing and payment of accounts payable[.]"[16] New Operators were paid a management fee for their services during the Management Period.[17] New Operators

[11] *Id.* §§ 1, 6.c.iv., 6.d.vii.
[12] *Id.* § 8.a.
[13] *Id.* § 10.b.
[14] *Id.* § 3.a.
[15] *Id.* § 3.c.
[16] *Id.* §§ 3.a., 3.c.iv.
[17] *Id.* § 5.a.

were precluded from holding themselves out as the operator of a Facility, but could "hold [themselves] out as the manager of the Facility."[18]

During the first three months of the Management Period, New Operators were required to process Old Operators' billing and account receivables that were invoiced during the ninety days prior to the Management Period.[19]

New Operators were responsible for losses incurred during the Management Period, but, "[a]ny expense that relate[d] to operation of the Facilit[ies] for the period prior to the Management Period Commencement Date [was to] be borne and paid by Old Operator[s]."[20] This is reiterated in Section 11.a., which specifies that "New Operator[s] shall not assume and shall not be liable for … any debts, liabilities or obligations of the Old Operator[s], including, …: any (i) expenses that accrue[d] or ar[o]se prior to the Management Period Commencement Date; [or] (ii) liabilities or obligations of the Old Operator[s] to [their] creditors …."[21]

The parties also agreed that

> New Operator[s] shall have no duty whatsoever to take any action … or make any payment … arising from or relating to any services provided or costs arising from or related to any services provided or costs incurred in connection with the management and operation of the Facilit[ies] prior to the Management Period Commencement Date, including … any matters relating to Contracts …[.][22]

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[18] *Id.* § 3.r.
[19] *Id.* § 4.a.ii. Old Operators were responsible for invoices that pre-dated this 90-day period. *Id.*
[20] *Id.* §§ 5.b.-.c.
[21] *Id.* § 11.a.
[22] *Id.* § 11.c.

The Old Operators Agreement was not an assumed contract in the Transfer Agreement.[23]

D. *Omnicare seeks to recover pre-Management Period invoices from New Operators.*

Old Operators failed to remit payment for Omnicare invoices for the period of December 2022 through March 2023.[24] Omnicare alleges that by the express terms of the Transfer Agreement, New Operators "agreed to pay Omnicare's open … invoices within 90 days" but they "failed to process any outstanding invoices on behalf of Old Operators" for this period.[25] New Operators have admitted liability for Omnicare invoices after the Management Period Commencement Date.[26]

"Upon information and belief," New Operators have collected revenues from Medicare and Medicaid, and other insurers, relating to the products and services Omnicare provided to Old Operators during the period of the outstanding invoices.[27]

Seeking to collect on the outstanding invoices, Omnicare asserts claims for breach of contract, account stated, and unjust enrichment against Old Operators. It asserts a claim for successor liability against New Operators and claims for fraudulent transfer against both sets of defendants.

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[23] Transfer Agreement Schedule 10(a) lists all Contracts and Schedule 10(b) identifies the assumed contracts. The Old Operators-Omnicare contract is not listed in Schedule 10(b).
[24] Compl. ¶¶ 42-46, 56.
[25] *Id.* ¶¶ 53-54, 56-57.
[26] *Id.* ¶¶ 53-54, 56-57.
[27] *Id.* ¶ 58.

New Operators move to dismiss under Rule 12(b)(2) for lack of personal jurisdiction.

III. THE PARTIES' CONTENTIONS

As Florida entities with no connection with Delaware, New Operators argue that the court has no jurisdiction over them. They further argue, as non-signatories to the Old Operators Agreement, they are not bound by the forum selection clause and no exception applies.[28] Finally, New Operators contend that none of Omnicare's alternative jurisdictional theories satisfy the pleading standard or minimum contacts requirements.

Omnicare contends that personal jurisdiction is proper because New Operators received and accepted goods and services under the Old Operators Agreement (and Medicare/Medicaid revenue), and therefore New Operators are estopped from avoiding the forum selection clause.[29] Omnicare asserts alternative theories of jurisdiction based on New Operators being a mere continuation of Old Operators, fraud, and ancillary jurisdiction.

IV. STANDARD OF REVIEW

A motion to dismiss for lack of personal jurisdiction is governed by Superior Court Civil Rule 12(b)(2). "Generally, a plaintiff does not have the burden to plead

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[28] RB at 1-2.
[29] Plaintiff's Answering Brief in Opposition to New Operators' Motion to Dismiss ("AB"), D.I. 25 at 6-9.

in its complaint facts establishing a court's personal jurisdiction over [a non-resident] defendant."[30] However, a plaintiff bears the burden of establishing jurisdiction when challenged by a motion to dismiss under Rule 12(b)(2).[31] The court is not limited to the pleadings and may consider affidavits and any discovery of record. Unless contradicted by the record, the court must still "(1) accept as true all well-pleaded allegations in the complaint; and (2) construe the record in the light most favorable to the plaintiff."[32]

V. DISCUSSION

A. *Are New Operators bound by the forum selection clause?*

Omnicare seeks to bind New Operators to the Old Operators Agreement's Delaware forum selection clause because they continued to receive benefits under the contracts after execution of the Transfer Agreement. Specifically, Omnicare argues that New Operators continued to receive Omnicare's goods and services as

[30] *BACO Holdings, Inc. v. Arria Data2Text, Ltd.*, 2023 WL 2199871, at *1 (Del. Super. Feb. 24, 2023) (quoting *Focus Fin. P'rs, LLC v. Holsopple*, 241 A.3d 784, 800 (Del. Ch. 2020)).
[31] *Econ. Steel Bldg. Techs., LLC v. E. W. Constr., Inc.*, 2020 WL 1866869, at *1 (Del. Super. Apr. 14, 2020); *Albert v. Alex. Brown Mgt. Srvs., Inc.*, 2005 WL 2130607, at *14 (Del. Ch. Aug. 26, 2005).
[32] *BACO Holdings, Inc.*, 2023 WL 2199871, at *2 (quoting *Green Am. Recycling*, 2021 WL 2211696, at *3 n.40 (Del. Super. June 1, 2021)); *Econ. Steel Bldg. Techs., LLC*, 2020 WL 1866869, at *1.

well as insurance reimbursement benefits.[33] This is confirmed, Omnicare contends, by New Operators' admission of liability for post-Transfer Agreement invoices.[34]

New Operators argue that they did not receive a direct benefit from the Old Operators Agreement, nor does the amended complaint allege any.

In general, a non-signatory is not bound by the terms of a contract. However, a forum selection clause may be binding on a non-signatory where: "(1) … the forum selection clause is valid; (2) … the [non-signatory] is a third-party beneficiary or is 'closely related to' the contract; and (3) … the claim arises from the [non-signatory]'s standing relating to the agreement."[35] A non-signatory is "closely related" when the non-signatory receives a "direct benefit" from the agreement or it was foreseeable that the non-signatory would be bound by the agreement.[36]

There is no dispute that the Delaware forum selection clause is valid. For the second element, Omnicare argues the "closely related" ground based on receipt of a direct benefit.

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33 AB at 7-8.
34 *Id.* at 8.
35 *BAM Int'l, LLC v. MSBA Group Inc.*, 2021 WL 5905878, at *11 (Del. Ch. Dec. 14, 2021); *RGIS Intern'l Transition Holdco, LLC v. Retail Svrs. WIS Corp.*, 2025 WL 3560688, at *5 (Del. Super. Sept. 29, 2025); *Yangaroo Inc. v. Digital Media Svrs. Inc.*, 2024 WL 2791100, at *7 (Del. Super. May 30, 2024). This test is sometimes referred to as the *Capital Group* test, originating from *Capital Group Cos., Inc. v. Armour*, 2004 WL 2521295 (Del. Ch. Oct. 29, 2004). *Florida Chem. Co., LLC v. Flotek Indus., Inc.*, 262 A.3d 1066, 1047, 1090 (Del. Ch. 2021).
36 *RGIS Intern'l Transition Holdco, LLC*, 2025 WL 3560688, at *5. *See also, Omegawave Oy v. OTO.Coach, Inc.*, 2026 WL 1765663, at *10 (Del. Super. June 12, 2026) (the test is disjunctive).

"'The direct benefit may arise at the time of contracting, or a party may accept the benefits of an agreement after it is executed.'"[37] "'Both pecuniary and nonpecuniary benefits [are] sufficient to satisfy this test.'"[38] '[T]o be bound by [the] forum selection clause[], [the] non-signator[y] must *actually receive* a benefit under or by way of the contract.'"[39] In such a case, the non-signatory is estopped from disavowing the contract's forum selection clause.[40]

Omnicare argues in its brief that "the facilities continued to order, and Omnicare continued to provide, goods and services under the New Operators' tenure of the facilities."[41] Omnicare's amended complaint, however, does not allege that Omnicare provided goods or services to the Facilities after April 1, 2023.[42] Thus, this theory fails to satisfy the second element.

Omnicare next contends that because New Operators received revenue from various insurers stemming from the products and services Omnicare provided to Old Operators, New Operators received a direct benefit.[43] New Operators respond that

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[37] *Omegawave Oy*, 2026 WL 1765663, at *10 (quoting *Florida Chem. Co.,* 262 A.3d at 1091).
[38] *Id.* (quoting *Florida Chem. Co.,* 262 A.3d at 1091).
[39] *Id.* (quoting *Sustainability P'rs LLC v. Jacobs,* 2020 WL 3119034, at *6 (Del. Ch. June 11, 2020)).
[40] *Id.*
[41] AB at 7-8.
[42] *Reylek v. Albence*, 2023 WL 142522, at *2 (Del. Super. Jan. 10, 2023) (quoting *Anglo Am. Sec. Fund, L.P. v. S.R. Glob. Int'l Fund, L.P.*, 829 A.2d 143, 155 (Del. Ch. 2003)) ("'[p]arties may not amend the pleadings through briefing on a motion to dismiss.'").
[43] AB at 8.

merely providing administrative services to process claims does not constitute receiving a direct benefit under the contract.

Omnicare's allegation is directly contradicted by the Transfer Agreement. While New Operators were responsible for preparing and submitting Medicare and Medicaid claims,[44] "[a]ny revenue New Operator[s] directly or indirectly receive[] during the Management Period relating to operations of the Facilit[ies] prior to the Management Period Commencement Date … shall be remitted to Old Operator[s.]"[45] Thus, any receipt of insurance benefits during the period Omnicare provided goods and services to the Facilities, are for the benefit of Old Operators.

Lastly, Omnicare argues that "New Operators' admission of liability for invoices for goods and services upon execution of the [Transfer Agreement] expressly confirms acceptance of benefits under the" Old Operators Agreement.[46] Omnicare misconstrues the Transfer Agreement. New Operators agreed to process debts and receivables on behalf of Old Operators for a fee. As noted, the revenue from those collection activities were to be remitted to Old Operators.

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[44] Transfer Agreement § 4.a.i.
[45] *Id.* § 4.c.
[46] AB at 8.

Omnicare has failed to show that New Operators are bound by the Old Operators Agreement's forum selection clause and personal jurisdiction over New Operators is not established on this basis.[47]

B. *Has Omnicare shown an alternative basis for jurisdiction over New Operators?*

As a general rule, a buyer of assets is not liable for a seller's debts or tortious conduct.[48] However, this general rule does not apply where (i) the buyer assumed the seller's liability; (ii) there is a *de facto* merger or consolidation; (iii) the buyer is a mere continuation of the seller under a different name; or (iv) there was fraud in the transaction.[49]

Omnicare asserts jurisdiction is proper under scenario (i), (iii), and (iv). Each is addressed in turn.

1. *Did New Operators expressly assume Old Operators' liabilities?*

Omnicare argues that by the Transfer Agreement requiring New Operators to process and pay Old Operators' accounts payable, New Operators "expressly assumed Old Operators' liabilities[.]"[50] Additionally, by New Operators "accepting Omnicare's continued performance" and admitting New Operators' liability for

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[47] Because Omnicare failed to satisfy the second element, the Court need not address the third element.
[48] *ADGS, LLC v. Emery Silfurtun, Inc.*, 2022 WL 1498433, at *6 (Del. Super. May 11, 2022) (citing *Ross v. Desa Holdings Corp.*, 2008 WL 4899226, at *4 (Del. Super. Sept. 30, 2008)).
[49] *Id.* (citing *Ross*, 2008 WL 4899226, at *4).
[50] AB at 9.

unpaid invoices dated after April 1, 2023, they expressly accepted liability for all of Old Operators' liabilities.[51]

New Operators argue that their agreement to provide administrative services, such as collecting and paying Old Operators' accounts receivable and payable, does not mean they assumed liability for these debts.[52]

As discussed above, Omnicare fails to plead that it delivered any goods or services during the Management Period. Therefore, its argument regarding continued performance is unavailing.

Omnicare asserts that New Operators impliedly assumed Old Operators' liabilities when it agreed to "process[] and pay[ ] accounts payable" on "behalf of Old Operators."[53] Omnicare relies on the terms of the Transfer Agreement for this argument. Allegations are not well-pled when they are contradicted by the document upon which they rely.[54]

While New Operators agreed to assume "management responsibility" for the "bookkeeping, accounting, and administrative functions" of the Facilities,[55] they expressly disclaimed assuming any liabilities. Section 11 is clear: "New Operator[s]

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[51] *Id.*
[52] RB at 4-5.
[53] AB at 9.
[54] *WyPie Investments, LLC v. Homschek*, 2018 WL 1581981, at *8 n.89 (Del. Super. Mar. 28, 2018) (quoting *H–M Wexford LLC v. Encorp, Inc.*, 832 A.2d 129, 139 (Del. Ch. 2003) ("[A] complaint may, despite allegations to the contrary, be dismissed where the unambiguous language of documents upon which the claims are based contradict the complaint's allegations.")).
[55] Transfer Agreement §§ 3.b.-.c.

shall not assume and shall not be liable for, … any debts, liabilities or obligations of the Old Operator[s.]"[56]

Omnicare failed to establish that New Operators expressly or impliedly assumed the liabilities of Old Operators.

2. *Are New Operators a mere continuation of Old Operators?*

Omnicare argues that because New Operators "continued to order and accept goods and services [from] Omnicare[,]" it is a mere continuation of Old Operators.[57] New Operators contend that this argument is not enough to show a mere continuation.[58]

Courts narrowly construe the mere continuation theory.[59] "'The test is not the continuation of the business operation; rather, it is the continuation of the corporate entity.'"[60] Successor liability should only be applied "where the new entity is so dominated and controlled by the old company that [the] separate existence must be disregarded."[61] "The primary elements of continuation include the common identity of the officers, directors, or stockholders of the predecessor and successor

[56] *Id.* § 11.a.
[57] AB at 10.
[58] OB at 10.
[59] *Ross*, 2008 WL 4899226, at *4.
[60] *Id.* (quoting *Fountain v. Colonial Chevrolet Co.*, 1988 WL 40019, at *9 (Del. Super. Apr. 13, 1988)).
[61] *Id.* (citing *Elmer v. Tenneco Resins, Inc.*, 698 F. Supp. 535, 542 (D. Del. 1988)). *See also Rajamani v. Revways Corp.*, 2019 WL 169316, at *2 (Del. Super. Jan. 11, 2019) ("Delaware law is settled that a successor entity can be subject to personal jurisdiction related to acts of its predecessor entity.").

corporations, and the existence of only one corporation at the completion of the transfer."[62]

Again, Omnicare fails to allege that New Operators continued to order and accept goods and services. Omnicare also has pled no facts from which it may be inferred that Old Operators dominated or controlled New Operators. Further, there are no facts alleged that there was any overlap in management or owners.[63] Thus, there is nothing in the amended complaint to suggest that the Transfer Agreement was anything other than an arms-length transaction.[64] Omnicare failed to establish that the corporate separateness of these entities should be disregarded for jurisdictional purposes. Accordingly, this theory fails to establish jurisdiction over New Operators.

3. *Does the fraud claim provide a basis for jurisdiction?*

Omnicare alleges that New Operators and Old Operators fraudulently structured the transaction so that liabilities would not be paid—New Operators took all the assets leaving none to pay Old Operators' liabilities.[65] Based on these

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[62] *Simple Glob., Inc. v. Brathwait Watches, Inc.*, 2022 WL 100363, at *2 (Del. Super. Jan. 10, 2022) (citing *In re Asbestos Litig. (Bell)*, 517 A.2d 697, 699 (Del. Super. 1986)).
[63] AB at 10.
[64] *Ross*, 2008 WL 4899226, at *4.
[65] AB at 10.

allegations of fraud, Omnicare contends personal jurisdiction exists over New Operators.[66]

Even with a sufficiently pled fraudulent transfer claim, New Operators argue that personal jurisdiction cannot be exercised over them because they have no nexus to Delaware.[67] New Operators rely on *ADGS, LLC v. Emery Silfurtun, Inc.* for support.[68]

When a non-resident defendant challenges *in personam* jurisdiction, the Court applies a two-step analysis. "The Court first considers whether jurisdiction may be maintained under Delaware's long-arm statute. If jurisdiction is proper under the long-arm statute, the court then considers whether subjecting a defendant to jurisdiction in Delaware violates the Due Process Clause of the Fourteenth Amendment."[69]

Delaware's long-arm statute, Section 3104(c), permits personal jurisdiction over a non-resident defendant who

> (1) Transacts any business or performs any character of work or service in the State;
> (2) Contracts to supply services or things in this State;
> (3) Causes tortious injury in the State by an act or omission in this State;
> (4) Causes tortious injury in the State or outside of the State by an act or omission outside the State if the person regularly does or solicits

[66] *Id.*
[67] OB at 7-9.
[68] *Id.* at 7-8 (citing *ADGS, LLC*, 2022 WL 1498433).
[69] *Rotblut v. Terrapinn, Inc.*, 2016 WL 5539884, at *4 (Del. Super. Sept. 30, 2016). *ADGS, LLC*, 2022 WL 1498433, at *6; *Rotblut*, 2016 WL 5539884, at *5 (a plaintiff must make a specific showing that the court has jurisdiction over the movant).

> business, engages in any other persistent course of conduct in the State or derives substantial revenue from services, or things used or consumed in the State;
> (5) Has an interest in, uses or possesses real property in the State; or
> (6) Contracts to insure or act as surety for, or on, any person, property, risk, contract, obligation or agreement located, executed or to be performed within the State at the time the contract is made, unless the parties otherwise provide in writing.[70]

If the long-arm statute is satisfied, the court will then consider whether "the non-resident defendant ha[s] 'minimum contacts' with the forum so that the litigation does not offend traditional notions of 'fair play and substantial justice.'"[71] This "is determined 'from the close examination of the particular circumstances of each case.'"[72] "Each defendant must have purposefully established minimum contacts with the forum state such that he reasonably should 'anticipate being haled into court' there."[73]

New Operators are Florida limited liability companies that operate Florida long-term care facilities. Omnicare has failed to show that New Operators transacted business in Delaware, committed a tort or injury in Delaware, or have any nexus to Delaware. Indeed, Omnicare does not attempt to satisfy Section 3104(c). Without

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[70] 10 *Del. C.* § 3104(c).
[71] *Rotblut*, 2016 WL 5539884, at *4 (citing *Transportes Aereos De Angola v. Ronair, Inc.*, 544 F. Supp. 858, 865 (D. Del. 1992)).
[72] *Id.* (quoting *Transportes Aereos De Angola*, 544 F. Supp. at 865).
[73] *Id.* (citing *Burger King Corp. v. Rudzewicz*, 471 U.S. 462, 474 (1985)).

a statutory basis, Omnicare's fraud claim is insufficient to exercise jurisdiction over New Operators. *ADGS* is consistent with this ruling.

In *ADGS*, plaintiff asserted a breach of contract claim against the Emery defendants. Plaintiff also asserted a successor liability claim against the non-resident Hartmann defendants, asserting that the Emery and Hartmann defendants "crafted the [APA] in such a way as to hinder, delay, and foreclose [plaintiff's] recovery against the Emery [d]efendants and to defraud [plaintiff.]"[74] The Hartmann defendants moved to dismiss for lack of personal jurisdiction.[75]

The court noted that while the "APA possibly could be construed as containing certain indicia of a fraudulent transfer[,]" that was not sufficient to establish jurisdiction over the non-resident defendants.[76] The court continued, that even if the APA were a fraudulent transfer, it "would be a fraudulent transfer with no nexus to Delaware."[77] The court reinforced that "'it is essential in each case that there be some act by which the defendant purposely avails itself of the privilege of conducting activities within the forum state, thus invoking the benefits and

[74] *ADGS, LLC*, 2022 WL 1498433, at *3.
[75] *Id.* The Emery defendants were subject to jurisdiction through a forum selection clause in the contract. *Id.* at *6.
[76] *Id.*
[77] *Id.*

protections of its laws.'"[78] With no statutory basis for jurisdiction, the court granted the motion to dismiss.[79]

The same result is required here—without a statutory basis to confer jurisdiction over New Operators, they must be dismissed from this action.[80]

C. *May the court exercise ancillary jurisdiction over New Operators?*

Omnicare argues that because this court has personal jurisdiction over Old Operators, it may exercise ancillary jurisdiction over New Operators. This is so, Omnicare argues, because the factual predicate for the claims against Old Operators and New Operators are the same.[81] New Operators argue that there is no legal or factual basis to exercise ancillary jurisdiction.[82]

In the court's discretion, it may exercise ancillary jurisdiction "to litigate a claim for which personal jurisdiction would not otherwise exist."[83] The exercise of ancillary jurisdiction is permissible when personal jurisdiction has been established over the defendant on a claim and the subject matter of the additional claim against that defendant for which personal jurisdiction is lacking, is sufficiently related.[84]

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[78] *Id.* (quoting *Gould v. Gould*, 2011 WL 141168, at *7 (Del. Ch. Jan. 7, 2011)).
[79] *Id.*
[80] Because Omnicare failed to satisfy Section 3104, the Court does not reach the second step in the jurisdictional analysis.
[81] AB at 12-13.
[82] RB at 5-6.
[83] *Desmond v. Desmond*, 2024 WL 4851606, at *2 (Del. Super. Nov. 21, 2024).
[84] *Id.* (citing *Capital Group Companies., Inc.*, 2004 WL 2521295) ("The doctrine applies where the claim is brought along with other claims for which jurisdiction does exist and are sufficiently related to that claim to warrant prosecution before a single tribunal."); *Harris v. Harris*, 289 A.3d

There is no claim for which jurisdiction exists over New Operators, thus, there is no basis to exercise ancillary jurisdiction. The doctrine does not permit the court to impute one party's personal jurisdiction to another party simply because the causes of action against them are based on the same facts. Accordingly, Omnicare's final theory of jurisdiction also fails.

VI. CONCLUSION

Omnicare has failed to meet its burden to make a *prima facie* showing of personal jurisdiction over New Operators. Therefore, New Operators' Motion to Dismiss is **GRANTED**.

IT IS SO ORDERED.

/s/Kathleen M. Miller
Kathleen M. Miller, Judge

277, 297 (Del. Ch. 2023) (quoting *Fitzgerald v. Chandler*, 1999 WL 1022065, at *4 (Del. Ch. Oct. 14, 1999)) ("'[O]nce a valid claim has been brought and personal jurisdiction established over a party defending a proper claim, ... Delaware courts are justified in asserting personal jurisdiction over the defending party where the subject matter of the claim is sufficiently related to the plaintiff's independent claims.'").