

IN THE COURT OF CHANCERY OF THE STATE OF DELAWARE

CLEVELAND-CLIFFS BURNS)
HARBOR LLC, a Delaware limited)
liability company, and)
CLEVELAND-CLIFFS STEEL LLC,)
a Delaware limited liability company,)

Plaintiffs,)

v.)

C.A. No. 2022-0378-LWW)

BOOMERANG TUBE, LLC, a)
Delaware limited liability company,)
BLACK DIAMOND CAPITAL)
MANAGEMENT, L.L.C., a Delaware)
limited liability company, and)
PTC LIBERTY TUBULARS, LLC, a)
Delaware limited liability company,)

Defendants.)

MEMORANDUM OPINION

Date Submitted: June 2, 2026
Date Decided: September 28, 2026

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WILL, Vice Chancellor

The plaintiffs sold steel products to Boomerang Tube, LLC—a now-defunct producer of specialized steel goods for the oil and gas industry—and were left with an unsecured claim when Boomerang failed to pay for them. They now seek to recover from PTC Liberty Tubulars, LLC, the purchaser of certain Boomerang assets in an Article 9 sale.

The plaintiffs’ theories—styled as claims for successor liability and fraudulent transfer—are legally meritless. At bottom, they are an appeal to equity by a disgruntled creditor. There are admittedly some strange facts here, like a Christmas Day sale notice and a bidding deadline just after the winter holidays. But no equities call for bending the law to pay an unsecured creditor.

The plaintiffs failed to prove the fundamental elements of their claims. Judgment is for the defendant.

I. BACKGROUND

Unless otherwise noted, the following facts were stipulated to by the parties or proven by a preponderance of the evidence at trial.¹

¹ See Joint Pre-trial Stipulation (Dkt. 208) (“PTO”). Trial occurred over three days, during which three fact witnesses and four expert witnesses testified live. See Trial Trs. Vols. I-III (Dkts. 226-28). Trial testimony is cited as “[Name] Tr. ___.” The trial record contains 397 joint exhibits and 17 deposition transcripts. Exhibits are cited by the numbers provided on the parties’ joint exhibit list as “JX ___,” unless otherwise defined. See Third Am. Joint Ex. List (Dkt. 219). Deposition transcripts are cited as “[Name] Dep. ___.”

A. Boomerang and Black Diamond

Boomerang Tube, LLC is a Delaware entity that produced specialized tubing for oil and natural gas customers.² It operated manufacturing facilities in Liberty, Texas (the “Liberty Facility”) and Houston, Texas (the “Houston Facility”).³

In June 2015, Boomerang filed for bankruptcy and emerged in February 2016 under a confirmed Chapter 11 plan.⁴ Under that plan, Boomerang became a portfolio company of two funds managed by asset-management firm Black Diamond Capital Management, L.L.C. (“Black Diamond”): BDCM Opportunity Fund III, L.P. (“Fund III”) and BDCM Opportunity Fund IV, L.P. (“Fund IV”).⁵ Fund III and Fund IV acquired 44.54% and 25.76% of the equity, respectively, in Boomerang’s parent company—Boomerang Tube Holdings, Inc.—giving Black Diamond a combined 70.30% controlling majority stake alongside 21 unaffiliated minority investors (29.70%).⁶

² PTO ¶ 30; *see* Tregenza Dep. 25-26; Deckoff Tr. 77-78; Hrosik Tr. 11-12.

³ PTO ¶¶ 31-32.

⁴ *Id.* ¶ 21. When Boomerang emerged from bankruptcy, its valuation was \$335 million. JX 244 at 9195.

⁵ PTO ¶¶ 23-26. Black Diamond is a registered investment advisor that provides advice to its affiliated advisor and general partner entities. *Id.* ¶¶ 53-54. On the private equity side of its business, Black Diamond purchases controlling interests in companies and works with those businesses to maximize value. Deckoff Tr. 72-73; Fontana Dep. 26-30.

⁶ PTO ¶¶ 23-26.

Black Diamond also secured the right to appoint a majority of Boomerang's six-person Board of Directors (the "Board").⁷ Until December 2020, the Boomerang Board consisted of the following individuals: Stephen Deckoff, Black Diamond's founder and managing principal; John Fontana, the managing director of Black Diamond; Cary Hart, the CEO of a Black Diamond portfolio company; Jesse Austin III, a minority appointee; Mark Steele, an outside steel expert; and Jim Tregenza, Boomerang's CEO.⁸

Through Funds III and IV, Black Diamond also became Boomerang's largest senior secured lender pursuant to a Second Amended and Restated Term Credit Agreement (the "Credit Agreement").⁹ The Credit Agreement gave Funds III and IV extensive rights, including to replace the loans' administrative and collateral agent, to direct the agent to accelerate loans in the event of default, and to direct the agent to sell Boomerang's assets.¹⁰ The loans were secured by all of Boomerang's assets, comprising its personal property as well as the Liberty and Houston Facilities.¹¹

⁷ JX 6 § 4.7(a)-(b); Fontana Tr. 397-98.

⁸ PTO ¶¶ 29, 50(d), 55; Deckoff Tr. 87-99.

⁹ Deckoff Tr. 103-04; JX 54 at 6385; PTO ¶ 69.

¹⁰ JX 54 §§ 9.2, 10.6(b), 10.8(a).

¹¹ PTO ¶ 71.

B. Boomerang's Financial Struggles

After emerging from bankruptcy, Boomerang adopted a “run it till it dies” mentality.¹² Its employees were expected to “just keep getting tonnage out” without regard to safety or quality.¹³ Boomerang’s equipment deteriorated,¹⁴ along with its financial and operational health post-bankruptcy.

Between 2017 and 2019, Boomerang suffered cumulative financial losses of nearly \$139 million.¹⁵ By 2020, Boomerang was “in severe crisis.”¹⁶ Demand for its products fell considerably in early 2020 amid the onset of the COVID-19 pandemic and an increase in crude oil production in Russia and Saudi Arabia.¹⁷ These developments precipitated a sharp decline in oil prices, with U.S. crude oil prices turning negative.¹⁸

¹² Johnson Dep. 147-52.

¹³ *Id.* at 152.

¹⁴ Hart Tr. 605-06 (testifying that key equipment “was completely rotted” or “destroyed” or “not operable”).

¹⁵ *Id.* at 585-86.

¹⁶ Deckoff Tr. 88; JX 95 at 938 (reflecting liabilities totaling \$165 million, including \$26.6 million in accounts payable).

¹⁷ Fontana Tr. 424; Deckoff Tr. 95-97; JX 244.

¹⁸ Deckoff Tr. 95-96.

Boomerang attempted to improve its financial position. It hired a new CEO and CFO to solidify its executive leadership team.¹⁹ It also obtained a \$15 million “rescue loan” from Fund IV.²⁰

These efforts proved futile. New orders stopped coming in and preexisting orders were canceled. Boomerang became so “desperate to sell” products that it “beg[ged]” clients “to take” them.²¹ By the close of 2020, Boomerang had run out of cash and was losing approximately \$3 million per month.²² It also had an asset-backed line of credit that was “tapped out[,]” and default grew imminent.²³

C. The ArcelorMittal Purchases

Boomerang continued to operate during its financial struggles. To produce tubing, it needed rolled steel products.

From June to November 2020, Boomerang purchased hot-rolled steel products from ArcelorMittal Burns Harbor LLC and ArcelorMittal USA LLC (together, “ArcelorMittal”).²⁴ The purchases were governed by ArcelorMittal

¹⁹ JX 47; Edgeller Dep. 15-19.

²⁰ Deckoff Tr. 99-100 (testifying that “[n]one of the other shareholders were willing to participate” in the rescue loan, so “we provided it by ourselves”).

²¹ Tregenza Dep. 54-55.

²² Deckoff Tr. 103; Hart Tr. 591.

²³ Hart Tr. 591; JX 95; JX 96.

²⁴ PTO ¶¶ 61-62; Hrosik Tr. 14-15, 27-28, 35-38; Deckoff Tr. 104.

USA's Terms & Conditions of Sale.²⁵ Under those terms, if Boomerang failed to timely pay ArcelorMittal for the products, ArcelorMittal was entitled to reimbursement of its collection costs, including attorneys' fees and interest.²⁶

In total, Boomerang purchased approximately \$7.35 million of products.²⁷ ArcelorMittal transmitted invoices to Boomerang for each shipment (the "Invoices"), reflecting the sums owed.²⁸ Boomerang defaulted on each of the Invoices.²⁹

In December 2020, Cleveland-Cliffs Inc. acquired ArcelorMittal under a Transaction Agreement.³⁰ It assumed ArcelorMittal's rights under the Invoices.³¹

D. The Article 9 Sale

With Boomerang's insolvency imminent, Black Diamond's lending arm began evaluating its options.³² Black Diamond identified a Chapter 7 bankruptcy or

²⁵ JX 42; PTO ¶ 62.

²⁶ JX 42 ¶ 15.

²⁷ See Hrosik Tr. 29-30, 60.

²⁸ JX 55; JX 56; JXs 62-63; JXs 68-72; Hrosik Tr. 30, 35.

²⁹ Hrosik Tr. 30, 52.

³⁰ PTO ¶¶ 63-64; JX 58; JX 59.

³¹ JX 58.

³² Deckoff Tr. 109-10 (explaining that Boomerang "wasn't a viable company" because it "was losing \$3 million EBITDA per month, and the management team didn't have any plan to correct that").

an Article 9 sale as the principal options to recover on its secured debt.³³ The Boomerang Board did not file for bankruptcy.³⁴ Thus, Black Diamond pursued an Article 9 sale.³⁵

On December 18, 2020, Black Diamond Commercial Finance (“BDCF”)—Black Diamond’s administrative and collateral agent—sent Boomerang a notice of default and reservation of rights.³⁶ That notice explained that an event of default had occurred due to Boomerang’s failure to satisfy Section 8.11 of the Credit Agreement, which set a minimum EBITDA requirement.³⁷

Two days later, on December 20, Deckoff resigned from Boomerang’s Board and was replaced by Kevin Castellanos—a Black Diamond employee.³⁸ An “information barrier” was erected between Black Diamond professionals on the lending side, who sought to maximize Funds III and IV’s recovery, and the investment side, who supported Boomerang and its Board.³⁹

³³ *Id.*

³⁴ *Id.*; Tanna Tr. 488-89; *see* JX 95.

³⁵ Deckoff Tr. 108-09.

³⁶ PTO ¶¶ 74-75; JX 109.

³⁷ PTO ¶ 75; JX 54.

³⁸ JX 113; Fontana Dep. 225-26.

³⁹ Deckoff Tr. 107-08; Tanna Tr. 498, 538.

BDCF retained Candlewood Partners, LLC as its financial advisor and Winston & Strawn LLP as its legal advisor to facilitate the Article 9 sale.⁴⁰ Winston & Strawn circulated a notice of public sale of collateral under the New York Uniform Commercial Code (the “Notice of Sale”) on December 24.⁴¹ The Notice of Sale explained that Boomerang’s personal property would be sold at a virtual public auction on January 4, 2021.⁴² The assets to be auctioned were “all [of Boomerang’s and its subsidiaries’] accounts, chattel paper, equipment, fixtures, general intangibles, inventory and other personal property, wheresoever located, together with the proceeds thereof.”⁴³

On December 25, 2020—Christmas Day—Candlewood sent the Notice of Sale to approximately 300 potential bidders by email.⁴⁴ BDCF also advertised the auction in three Houston publications.⁴⁵ Candlewood sent additional information about Boomerang’s inventory and accounts receivable to 18 potential bidders.⁴⁶ It

⁴⁰ PTO ¶ 78; Tanna Tr. 493-97.

⁴¹ JX 132; PTO ¶ 76.

⁴² JX 134; PTO ¶ 77.

⁴³ PTO ¶ 77 (citing JX 22 § 3.1).

⁴⁴ PTO ¶ 79; JX 150; JX 201 (native) (listing 309 recipients). Candlewood curated the list of recipients, selecting companies operating in the oil and gas space, private equity firms, and auctioneers. Tanna Tr. 500.

⁴⁵ See JX 178 (Houston Chronicle); JX 185 (Liberty Vindicator); JX 172 (American Metal Market); Tanna Tr. 506-07.

⁴⁶ JX 201; Pollack Dep. 63.

shared a “key equipment list” with ten prospective bidders who signed nondisclosure agreements.⁴⁷ The Notice of Sale set a bidding deadline of January 3, 2021, and required a 10% cash deposit.⁴⁸

The Article 9 sale went forward on January 4.⁴⁹ Two bidders were present: Centric Pipe, LLC and 2021 Bidco I, LLC.⁵⁰ 2021 Bidco I, LLC has since been renamed PTC Liberty Tubulars, LLC (“PTC Liberty”).⁵¹ Centric Pipe made several bids on Boomerang inventory, including an \$8 million bid for inventory plus an upsetting line.⁵² PTC Liberty submitted a \$16.5 million bid for all of Boomerang’s personal property.⁵³

BDCF accepted PTC Liberty’s bid.⁵⁴ BDCF and PTC Liberty executed an Asset Purchase Agreement to memorialize the sale.⁵⁵

⁴⁷ JX 201; Pollack Dep. 57-58.

⁴⁸ JX 132 at 7027.

⁴⁹ PTO ¶¶ 80-81; JX 130 at 1-2 (describing the list of assets at auction).

⁵⁰ PTO ¶ 82. The other attendees were Black Diamond affiliates. JX 199 at 3, 20.

⁵¹ PTO ¶¶ 33-35.

⁵² JX 192; JX 199 (auction transcript) 6 (explaining that Centric Pipe was “only bidding on the inventory”); PTO ¶ 83.

⁵³ JX 193; PTO ¶ 84.

⁵⁴ JX 199 at 21-25.

⁵⁵ PTO ¶ 86; JX 195.

At the time of the Article 9 sale, Boomerang's assets were encumbered by two perfected liens totaling approximately \$126.4 million.⁵⁶ The first-priority lien of \$16.1 million was held by Fifth Third Bank under a senior ABL facility.⁵⁷ The second-priority lien of \$110.3 million was held mainly by Black Diamond Funds III and IV under a term credit facility (\$87.5 million), with the remainder (\$22.8 million) held by unaffiliated minority lenders.⁵⁸ Fifth Third Bank was the most senior secured lender.⁵⁹ After the Article 9 sale, proceeds were used to pay \$16.1 million to Fifth Third Bank, satisfying the ABL debt and extinguishing its senior lien.⁶⁰ Over \$109 million of the term loan debt remained outstanding.

E. The Real Estate Foreclosures

Boomerang's real estate, which was excluded from the Article 9 sale, served as collateral for its outstanding debt under the Credit Agreement.⁶¹ Three days after

⁵⁶ Edgeller Dep. 86-87; JX 24.

⁵⁷ Edgeller Dep. 87-89 (concluding that Boomerang's outstanding debt to Fifth Third Bank, under a revolving loan facility, totaled approximately \$16.1 million at the time of the Article 9 sale); PTO ¶ 73.

⁵⁸ Fontana Dep. 101-02; Edgeller Dep. 313-15 (testifying that approximately \$110.3 million remained outstanding under the term loan, at the time of the Article 9 sale). The term loan is governed by the Credit Agreement. JX 54.

⁵⁹ PTO ¶ 72.

⁶⁰ *Id.* ¶ 87.

⁶¹ JX 213.

the Article 9 sale, PTC Liberty and Boomerang entered into a lease agreement under which PTC Liberty leased the Liberty Facility for \$39,677 per month.⁶²

Meanwhile, BDCF began foreclosure proceedings on Boomerang's real property. Two days after the Article 9 sale, BDCF sent Boomerang a notice of intent to accelerate the maturity of the loans secured by Boomerang's Houston and Liberty Facilities.⁶³ BDCF also sent notices that the Facilities would be foreclosed upon and sold at a public auction.⁶⁴

On February 2, 2021, PTC Liberty purchased the Liberty Facility for \$1 million at a public auction.⁶⁵ Black Diamond then formed another portfolio company—Boomerang Houston RE LLC—to acquire the Houston Facility.⁶⁶ On June 1, 2021, Boomerang Houston RE purchased the Houston Facility for \$25.1 million at a public auction.⁶⁷

F. PTC Liberty Develops Its Operations

While the real estate foreclosures were proceeding, PTC Liberty began developing its operations using the personal property acquired at the Article 9 sale.

⁶² PTO ¶ 88; JX 288.

⁶³ JX 213; PTO ¶ 95.

⁶⁴ PTO ¶ 96; JX 220.

⁶⁵ PTO ¶ 97; JX 270.

⁶⁶ PTO ¶ 59; JX 298 § 6.1. Boomerang Houston RE was also owned by Funds III and IV. PTO ¶¶ 53, 60.

⁶⁷ PTO ¶ 103; JX 304.

PTC Liberty, like Boomerang, entered the business of producing steel pipes used in the natural gas and crude oil drilling markets.⁶⁸

PTC Liberty immediately focused on operational readiness and customer outreach. It invested over \$43 million to repair and upgrade equipment, revamped its manufacturing processes, switched suppliers and vendors, and changed staffing at the facility.⁶⁹ It adopted new public-facing branding and licensing, and used a new thread protector color—a branding signal in the tubular goods industry.⁷⁰ PTC Liberty worked to foster a culture of safety and quality.⁷¹ It did not automatically inherit Boomerang’s customers and undertook efforts to build its own customer base.⁷²

PTC Liberty also established a new management structure. At PTC Liberty’s inception, Deckoff served as sole member of its Board of Managers and as its Managing Principal.⁷³ PTC Liberty also engaged PTC Alliance LLC—another

⁶⁸ PTO ¶ 42.

⁶⁹ Hart Tr. 599-608; Johnson Tr. 475.

⁷⁰ Deckoff Tr. 121-22. The color of the thread protector—a visible plastic covering on the ends of pipes—reflects which company produced the pipes. Boomerang was red and blue; PTC Liberty was orange. *Id.* The decision to change the color signaled to the market that PTC Liberty was different from Boomerang. *Id.*

⁷¹ Hart Tr. 599-608; Johnson Tr. 473-75.

⁷² Hart Tr. 600-01.

⁷³ PTO ¶ 39.

Black Diamond portfolio company—to provide management services.⁷⁴ PTC Alliance began providing those services shortly after the Article 9 sale under an oral arrangement, which the companies later memorialized in a written Management Services Agreement.⁷⁵

The Management Services Agreement covered “financial, managerial and operational services in connection with [PTC Liberty’s] day-to-day operations.”⁷⁶ Through PTC Alliance, Cary Hart served as PTC Liberty’s CEO, Steve Bogle as its CFO, and Vince Fera as its General Counsel.⁷⁷ None of those executives had been employed by Boomerang.⁷⁸ In exchange for PTC Alliance’s services, PTC Liberty paid a fee based on the tonnage of products shipped.⁷⁹

G. This Litigation

In April 2022, plaintiffs Cleveland-Cliffs Burns Harbor LLC and Cleveland-Cliffs Steel LLC (together, “Cleveland-Cliffs”) filed this action against Black

⁷⁴ Tanna Tr. 509-11; PTO ¶ 90.

⁷⁵ Hart Tr. 596-98; PTO ¶¶ 89-90.

⁷⁶ JX 309. PTC Alliance would provide services including accounting and finance, legal work, and human resources. Hart Tr. 597-98.

⁷⁷ JX 309; Hart Tr. 597-98; Deckoff Tr. 120-21. Todd Dorsey later replaced Steve Bogle as the CFO of PTC Alliance, and he assumed that role for PTC Liberty as well. Hart Tr. 577-78, 598.

⁷⁸ Deckoff Tr. 120-21; Johnson Tr. 473. PTC Liberty never hired any members of Boomerang’s executive leadership. Tregenza Tr. 823. At most, Jim Tregenza and Tom Edgeller provided transition services after the Article 9 sale. Hart Tr. 609-14.

⁷⁹ JX 309.

Diamond, PTC Liberty, and Boomerang.⁸⁰ Cleveland-Cliffs brought claims for successor liability, fraudulent transfer, breach of contract, unjust enrichment, and declaratory judgments.⁸¹ As relief, it seeks payment for Boomerang's outstanding Invoices.

Black Diamond and PTC Liberty each moved to dismiss the suit under Court of Chancery Rule 12(b)(6).⁸² In a September 5, 2023 memorandum opinion, I granted Black Diamond's motion to dismiss in full.⁸³ As to PTC Liberty, I held that Cleveland-Cliffs advanced reasonably conceivable claims for fraudulent transfer and successor liability.⁸⁴ Boomerang never appeared, and I eventually entered a default judgment against it in February 2024.⁸⁵

⁸⁰ Dkt. 1.

⁸¹ Verified Amended Compl. (Dkt. 18) ¶¶ 89-132.

⁸² Dkts. 23, 24.

⁸³ *See Cleveland-Cliffs Burns Harbor LLC v. Boomerang Tube, LLC*, 2023 WL 5688392, at *4-19 (Del. Ch. Sept. 5, 2023).

⁸⁴ *Id.*

⁸⁵ Dkts. 65, 68.

A three-day trial began on January 14, 2026.⁸⁶ Post-trial briefing was complete as of April 15.⁸⁷ Post-trial argument was held on June 2, after which the matter was submitted for decision.⁸⁸

II. ANALYSIS

Two claims proceeded to trial: whether Boomerang’s transfer of assets constitutes a fraudulent transfer under the Delaware Uniform Fraudulent Transfer Act (DUFTA), and whether PTC Liberty is liable for Boomerang’s debts under a successor liability theory.⁸⁹ Cleveland-Cliffs bears the burden of proving these claims by a preponderance of the evidence.⁹⁰ It has not done so.

A. Fraudulent Transfer

Cleveland-Cliffs claims that the Article 9 sale was a “fraudulent transfer,” as defined in DUFTA.⁹¹ It seeks to hold Boomerang (the transferor) and PTC Liberty

⁸⁶ See Trial Trs., Vols. I-III (Dkts. 226-28).

⁸⁷ Pls.’ Post-trial Opening Br. (Dkt. 231); PTC Liberty Tubulars LLC’s Post-trial Br. (Dkt. 234) (“Def.’s Post-trial Br.”); Pls.’ Post-trial Reply Br. (Dkt. 239).

⁸⁸ Dkt. 244.

⁸⁹ PTO ¶¶ 109-10.

⁹⁰ *Revolution Retail Sys., LLC v. Sentinel Techs., Inc.*, 2015 WL 6611601, at *9 (Del. Ch. Oct. 30, 2015) (“Proof by a preponderance of the evidence means proof that something is more likely than not.”); *In re Coverdale*, 1987 WL 758002, at *3 (Del. Ch. Aug. 3, 1987) (explaining that the “burden of proof in civil cases in Delaware is typically one of preponderance of the evidence” (citation omitted)).

⁹¹ 6 *Del. C.* § 1304(a). Under DUFTA, such transfers may be actual or constructive in form. 6 *Del. C.* § 1304(a)(1) (providing a cause of action for actual fraudulent transfers); 6 *Del. C.* §§ 1304(a)(2), 1305(a) (same but for constructive fraudulent transfers); *see also*

(the transferee) liable under this theory. Before reaching whether the Article 9 sale was fraudulent, I must first determine whether the disposition of Boomerang’s personal property constituted a “transfer” of an “asset” within the meaning of DUFTA.

DUFTA defines a “transfer” as “every mode . . . of disposing of or parting with an asset or an interest in an asset.”⁹² An “asset” is the “property of a debtor,” but excludes “[p]roperty to the extent it is encumbered by a valid lien.”⁹³ A “valid lien,” in turn, is a “lien that is effective against the holder of a judicial lien subsequently obtained by legal or equitable process or proceedings.”⁹⁴ “Thus, for a transaction to qualify as a ‘transfer’ of ‘assets’ under DUFTA, the value of the transferred property must exceed the value of any valid liens.”⁹⁵

Great W. Ins. Co. v. Graham, 2026 WL 34966, at *10 (S.D.N.Y. Jan. 6, 2026) (summarizing the two).

⁹² 6 *Del. C.* § 1301(12).

⁹³ *Id.* § 1301(2).

⁹⁴ *Id.* § 1301(13).

⁹⁵ *Cleveland-Cliffs*, 2023 WL 5688392, at *8; *Rsrvs. Mgmt. Corp. v. 30 Lots, LLC*, 2009 WL 4652991, at *5 (Del. Super. Nov. 30, 2009) (holding that because the “mortgage lien . . . exceeded the value of the property, the lots [we]re not an ‘asset’” and, as a result, the “mortgage foreclosure sale was not . . . a ‘transfer’ by the debtor” within the meaning of DUFTA). Because DUFTA “is modeled on the UFTA[,] . . . decisions of other jurisdictions interpreting the same (or substantially similar) model statutes [provide] guidance.” *Burkhart v. Genworth Fin., Inc.*, 275 A.3d 1259, 1270 (Del. Ch. 2022). Other jurisdictions confirm this approach. See *In re Valente*, 360 F.3d 256, 260 (1st Cir. 2004) (finding that because a property “was only worth \$150,000 but was encumbered by a \$168,000 first mortgage, as well as a number of state and federal tax liens, it did not qualify as an ‘asset’ under the UFTA at the time of the transfer”); *Epperson v. Ent. Express, Inc.*,

My analysis of whether the transferred property qualifies as an “asset” proceeds in two parts. I first determine the amount of the liens encumbering the property and then assess the property’s value. Because the liens exceed the value of the property, the property is not an “asset” under 6 *Del. C.* § 1301(2)(a). Cleveland-Cliffs’ DUFTA claim therefore fails as a matter of law.

1. The Value of the Liens

PTC Liberty identifies approximately \$126.4 million in liens encumbering Boomerang’s assets at the time of the Article 9 sale.⁹⁶ Two liens comprise that total: the \$110.3 million lien under the Credit Agreement with Black Diamond, and the \$16.1 million lien that was later repaid to Fifth Third Bank.⁹⁷ Cleveland-Cliffs asks that I “disregard[]” the \$87.5 million liens held by Funds III and IV due to Black Diamond’s “inequitable conduct.”⁹⁸ Cleveland-Cliffs asserts that doing so would

338 F. Supp. 2d 328, 342 (D. Conn. 2004) (explaining that because various “security interests [were] ‘valid liens’ that exceeded the value of the collateral,” the property at issue was “preclud[ed] . . . from meeting UFTA’s definition of ‘asset’”), *aff’d*, 159 F. App’x 249 (2d Cir. 2005).

⁹⁶ Def.’s Post-trial Br. 42-43 & n.201; Edgeller Dep. 85-89, 313-15; JX 24.

⁹⁷ Edgeller Dep. 87-89, 313-15; JX 24.

⁹⁸ Pls.’ Post-trial Opening Br. 53-54 (asking this court to do so based on Black Diamond’s “inequitable conduct”). The \$87.5 million figure reflects the portion of Boomerang’s debt held by Black Diamond-managed funds. *See* Fontana Tr. 421-22; *supra* note 58 and accompanying text.

amount to an “equitable subordination” of those liens.⁹⁹ Its reliance on that doctrine is misplaced.

“Equitable subordination is a doctrine that, based on a creditor’s inequitable conduct and its effect on other creditors, allows that creditor’s debt to be subordinated to other claims in bankruptcy or allows the creditor’s liens to be transferred to the bankruptcy estate.”¹⁰⁰ Its practical effect is to permit bankruptcy courts to re-rank liens as higher or lower in priority “where justice so requires.”¹⁰¹ The doctrine does not extinguish liens—or ignore them for purposes of a fraudulent transfer analysis—as Cleveland-Cliffs suggests. It merely alters their relative priority.¹⁰² Even if equitable subordination applied, the value of the outstanding liens would remain the same.¹⁰³

⁹⁹ Pls.’ Post-trial Opening Br. 53-54.

¹⁰⁰ *Nelson v. Emerson*, 2008 WL 1961150, at *4 n.13 (Del. Ch. May 6, 2008); *see generally* 11 U.S.C. § 510(c)(1).

¹⁰¹ *In re John Varvatos Ents. Inc.*, 2022 WL 2256017, at *2 (3d Cir. June 23, 2022) (explaining that the “doctrine lets the court subordinate distribution of all or part of a higher priority claim in favor of a lower priority claim”).

¹⁰² *See In re SubMicron Sys. Corp.*, 432 F.3d 448, 462 (3d Cir. 2006) (articulating three prerequisites that must be met before equitable subordination can occur).

¹⁰³ Cleveland-Cliffs insists that the Court of Chancery has applied “equitable subordination” in other circumstances. Pls.’ Post-trial Opening Br. 53 (citing *In re Dura Medic Hldgs. Inc. Consol. Litig.*, 331 A.3d 796, 830 (Del. Ch. 2025)). But in the case it relies on, the court applied the doctrine by making a financing scheme “junior to other [c]ompany creditors but senior to the holders of common equity.” *Dura Medic*, 331 A.3d at 830. The court did not ignore the financing scheme, as Cleveland-Cliffs would have me do to the liens here.

Second, Cleveland-Cliffs points out that the liens were secured not only by Boomerang's personal property, but also by its real property.¹⁰⁴ It argues that DUFTA's definition of "asset" as "property of a debtor" does not expressly "indicate[] courts must view the property transferred in isolation to determine 'the extent [to which] it is encumbered.'" ¹⁰⁵ In support, Cleveland-Cliffs cites *Siematic Mobelwerke GmbH & Co. KG v. Siematic Corp.*—a Pennsylvania federal court decision—which states that when "an obligation is secured by a lien on several items of property and only one such item is disposed of, it may be appropriate to allocate the obligation among the items of property subject to the lien for the purpose of determining the 'extent' to which the item disposed of is encumbered."¹⁰⁶

Cleveland-Cliffs' reliance on *Siematic* is misplaced. The quoted language comes from commentary specific to the Pennsylvania Uniform Fraudulent Transfer Act.¹⁰⁷ The *Siematic* court itself did not analyze or apply that commentary in resolving the summary judgment motion.¹⁰⁸ More importantly, DUFTA contains no

¹⁰⁴ Pls.' Post-trial Opening Br. 47-48 (arguing that the Fifth Third Bank loan was secured by "substantially all of Boomerang's assets[,] and that the Credit Agreement "encumbered the entirety of Boomerang's property, including its real property" (emphasis omitted)).

¹⁰⁵ Pls.' Post-trial Reply Br. 19 (quoting 6 *Del. C.* § 1301(2)).

¹⁰⁶ 643 F. Supp. 2d 675, 691 (E.D. Pa. 2009).

¹⁰⁷ *Id.*

¹⁰⁸ Cleveland-Cliffs cites no other cases interpreting this provision of the Pennsylvania statute, and I have found none.

comparable commentary. Although Delaware courts may look to other jurisdictions when interpreting uniform acts, that principle does not supply a basis to import commentary accompanying another state's statute where Delaware's own statutory text contains no such allocation rule.¹⁰⁹

Thus, Cleveland-Cliffs offers no persuasive basis to allocate or reduce the value of the liens encumbering Boomerang's personal property.

2. The Value of the Transferred Property

Next, I must determine the value of the transferred property for purposes of DUFTA. Cleveland-Cliffs advances two arguments concerning the value of the transferred property. First, it invokes the "collapsing sales doctrine" to treat the Article 9 sale and the later real-estate foreclosures as a single transaction. Second, if the Article 9 sale is considered on its own, Cleveland-Cliffs contends that the transferred personal property was worth \$104.7 million. I reject Cleveland-Cliffs' collapsing theory and conclude that, even accepting its own valuation evidence, the value of the transferred property did not exceed the approximately \$126.4 million in asserted liens.

¹⁰⁹ *Cf. Burkhart*, 275 A.3d at 1270 n.68 (explaining that Delaware courts "may look to other states when interpreting uniform acts").

a. The Collapsing Sales Doctrine

To begin, Cleveland-Cliffs asserts that the value of the “transferred property” should include all Boomerang property—the personal property transferred at the Article 9 sale as well as the real property transferred in the later foreclosures.¹¹⁰ In other words, Cleveland-Cliffs asks me to treat the three transactions as a single transfer for purposes of DUFTA. It posits that the three sales were part of a prearranged, fraudulent scheme by Black Diamond to strip Boomerang of its assets while shedding its debts.¹¹¹ To support this theory, Cleveland-Cliffs borrows the “collapsing sales doctrine” from bankruptcy law.¹¹²

Under that doctrine, “multiple transactions may be ‘collapsed’ and treated as ‘steps in a single transaction for analysis under the [bankruptcy code’s] fraudulent conveyance laws.’”¹¹³ Bankruptcy “courts focus their analysis not on the structure”

¹¹⁰ Pls.’ Post-trial Opening Br. 4, 46-50. “The total value of Boomerang’s assets [transferred] was \$137.2 million—\$97 million in machinery, equipment, and inventory, \$32.5 million in real property, and \$7.7 million in [accounts receivable], cash, and cash equivalents.” *Id.* (emphasis added); see also Kinahan Tr. 226.

¹¹¹ Pls.’ Post-trial Opening Br. 50. This argument is based on two core theories. The first is that substance should not give way to form: viewing the sales in isolation might immunize the debtor’s fraud by breaking large transfers into smaller chunks that, in isolation, would not exceed the value of the outstanding liens. The second is that it implicates the idea of operational necessity: the machines were useless without the real estate, rendering the transactions functionally inseparable. These arguments are not founded in the record. See *infra* notes 118-125 and accompanying text.

¹¹² Pls.’ Post-trial Opening Br. 51-52.

¹¹³ *In re Maxus Energy Corp.*, 641 B.R. 467, 532 (Bankr. D. Del. 2022) (citation omitted). The bankruptcy code addresses fraudulent transfers, allowing a debtor to void certain

of the transactions “but the knowledge and intent of the parties involved.”¹¹⁴ They may consider “whether all parties involved in the individual transactions had knowledge of the other transactions; whether each transaction sought to be collapsed would have occurred on its own; and whether each transaction was dependent or conditioned on the other transactions.”¹¹⁵

This argument is unavailing for several reasons.

The collapsing sales doctrine has been deployed as an equitable mechanism to “analyze the motivations for a transfer as opposed to whether . . . a transfer of debtor property occurred in the first place.”¹¹⁶ It cannot be used to rewrite the statutory definition of a qualifying “asset” under DUFTA.¹¹⁷

Even if the doctrine were available, Cleveland-Cliffs has not shown that the transactions should be collapsed. The Article 9 sale and the later foreclosures of the Liberty and Houston Facilities were separate transactions over several months. The Article 9 sale took place in January 2021, the Liberty Facility foreclosure in

transfers made pre-bankruptcy where actual or constructive fraud exists. *See* 11 U.S.C. §§ 548, 550.

¹¹⁴ *In re Maxus Energy Corp.*, 641 B.R. at 532 (citation omitted).

¹¹⁵ *In re Jevic Holding Corp.*, 2011 WL 4345204, at *5 (Bankr. D. Del. Sept. 15, 2011).

¹¹⁶ *Crystallex Int’l Corp. v. Petroleos de Venezuela, S.A.*, 213 F. Supp. 3d 683, 692-93 (D. Del. 2016), *rev’d and remanded on other grounds*, 879 F.3d 79 (3d Cir. 2018).

¹¹⁷ *Id.* (explaining that the court “ha[d] not encountered any case applying the collapsing doctrine” to effectively rewrite the statutory language).

February, and the Houston Facility foreclosure in June.¹¹⁸ The transactions also involved different categories of property. Through the Article 9 sale, Boomerang parted with its personal assets.¹¹⁹ The foreclosures, by contrast, involved two parcels of real property located in different areas.¹²⁰ None of the sales was contingent upon or contractually linked to the others.¹²¹ All could have, and did, “occur[] on [their] own.”¹²²

The transactions also took place under different legal regimes.¹²³ Article 9 of the New York Uniform Commercial Code governed the sale of Boomerang’s personal assets; Texas law governed the foreclosures of the Liberty and Houston Facilities.¹²⁴ That distinction reflects the different legal treatment of the assets—not a strategic effort to divide a single transaction, as Cleveland-Cliffs suggests.

¹¹⁸ PTO ¶¶ 80, 97, 100-03.

¹¹⁹ JX 130 (list of items auctioned off at the Article 9 sale); PTO ¶¶ 80, 97, 102.

¹²⁰ PTO ¶¶ 97, 102. Candlewood told potential bidders that Boomerang’s real property was not for sale at the Article 9 auction. JX 168 (email from Grant Pollack stating, “I just made it very clear that [purchase of the real estate] is not an option”).

¹²¹ See *Jevic*, 2011 WL 4345204, at *5 (explaining that courts considering whether to collapse transactions examine, among other factors, whether the transaction “would have occurred on its own,” and whether each was “dependent or conditioned on the other transactions”).

¹²² *Id.*

¹²³ *Id.*

¹²⁴ Compare JX 199 at 4 (making plain that the Article 9 sale was governed by “Section 9-610 [of the] New York Uniform Commercial Code”), with JX 270 (bill of sale for the Liberty Facility), and JX 304 (bill of sale for the Houston Facility).

Because the transactions are separate and cannot be collapsed, the value of the personal property alone is considered for purposes of DUFTA.¹²⁵

b. The Value of the Personal Property

Having concluded that the Article 9 sale must be considered separately from the later foreclosures of the Houston and Liberty Facilities, I next consider the value of the personal property transferred in the sale.

Cleveland-Cliffs asserts that Boomerang's property falls into three categories: (1) machinery, equipment, and inventory; (2) real property; and (3) accounts receivable, cash, and cash equivalents.¹²⁶ Cleveland-Cliffs proffered expert testimony that, at the time of the Article 9 sale, the machinery, equipment, and inventory were worth \$97 million, and the accounts receivable, cash, and cash equivalents were worth \$7.7 million.¹²⁷ Thus, according to Cleveland-Cliffs, Boomerang's personal property was worth \$104.7 million. PTC Liberty disputes this number, presenting competing expert testimony that the total value of

¹²⁵ Prior cases applying the DUFTA confirm this result. *See 30 Lots*, 2009 WL 4652991, at *5 (assessing whether the transferred property constituted an "asset" under DUFTA based on the liens encumbering that property, without regard to other collateral securing the same debt).

¹²⁶ Kinahan Tr. 226-27; Saba Tr. 308-09.

¹²⁷ Kinahan Tr. 226-27; Saba Tr. 308-09; JX 354; JX 355. Mr. Wood valued Boomerang's real property at \$32.5 million. JX 353 at 54. As explained above, that figure does not factor into the assessment.

Boomerang's personal property was approximately \$69.56 million at the time of the Article 9 sale.¹²⁸

I need not determine which value is correct. Even accepting Cleveland-Cliffs' figure, the value of the transferred personal property does not exceed the value of the liens encumbering it. A personal property value of \$104.7 million is plainly less than the approximately \$126.4 million in asserted liens.

* * *

The value of the liens (\$126.4 million) exceeds the value of the transferred personal property (even using Cleveland-Cliffs' higher valuation of \$104.7 million). Given the lack of a qualifying asset, I do not reach whether the Article 9 sale was commercially reasonable under 6 *Del. C.* § 1308(e)(2).¹²⁹ The facts proven at trial that Cleveland-Cliffs cites in challenging the sales process—such as the Christmas Day distribution of the Notice of Sale and January 3 bid deadline—are of no moment.¹³⁰ Cleveland-Cliffs' fraudulent transfer claim fails at the threshold.

¹²⁸ Popovic Tr. 667; JX 361. The defendant's experts also concluded that the Liberty Facility was worth \$11.8 million, and the Houston Facility was worth \$10.4 million. JX 369 at 2; JX 370 at 2.

¹²⁹ See 6 *Del. C.* § 1308(e)(2) (stating that a "transfer is not voidable . . . if the transfer results from: . . . (2) [e]nforcement of a security interest in compliance with Article 9 of the Uniform Commercial Code"); see also Def.'s Post-trial Br. 51-58.

¹³⁰ See *supra* Section I.D. The defendant presented competing evidence that the Article 9 sale process was done in conformity with custom and practice for such sales under the Uniform Commercial Code. See Danner Tr. 743-80; Pollack Dep. 12-37.

B. Successor Liability

Cleveland-Cliffs next claims that PTC Liberty is liable for Boomerang's unpaid Invoices of over \$7.35 million under a successor liability theory.¹³¹

“Absent unusual circumstances, ‘a successor corporation is liable only for liabilities it expressly assumes.’”¹³² This rule “is not absolute,” however; there are “some limited situations where an avoidance of liability would be unjust.”¹³³ Recognized exceptions include “(1) the buyer’s assumption of liability; (2) de facto merger or consolidation; (3) mere continuation of the predecessor under a different name; or (4) fraud.”¹³⁴

Cleveland-Cliffs invokes the mere continuation and fraud exceptions.¹³⁵ It failed to prove that either applies.

¹³¹ PTO ¶¶ 61-62; Pls.’ Post-trial Opening Br. 29-38.

¹³² *Mason v. Network of Wilmington, Inc.*, 2005 WL 1653954, at *5 (Del. Ch. July 1, 2005) (citation omitted); see *Ross v. Desa Hldgs. Corp.*, 2008 WL 4899226, at *4 (Del. Super. Sept. 30, 2008) (“In Delaware, when one company sells or otherwise transfers all of its assets to another company, the buyer generally is not responsible for the seller’s liabilities, including claims arising out of the seller’s tortious conduct.”); cf. *Xperex Corp. v. Viasystems Techs. Corp., LLC*, 2004 WL 3053649, at *2 (Del. Ch. July 22, 2004) (noting that “[w]hether or not a Delaware corporation is liable for the conduct of another corporation is a question of Delaware law”).

¹³³ *Mason*, 2005 WL 1653954, at *5.

¹³⁴ *Ross*, 2008 WL 4899226, at *4.

¹³⁵ Earlier in this case, Cleveland-Cliffs also raised the de facto merger exception. I rejected it at the pleading stage. See *Cleveland-Cliffs*, 2023 WL 5688392, at *15-16.

1. Mere Continuation

“The continuation theory of corporate successor liability has been narrowly construed by the Delaware courts.”¹³⁶ It requires that “the purchaser of the assets . . . be a continuation of ‘the same legal entity,’ not just a continuation of the same business in which the seller of the assets engaged.”¹³⁷ “The test is not the continuation of the business operation; rather, it is the continuation of the corporate *entity*.”¹³⁸ The new entity must “be so dominated and controlled by the old company that [its] separate existence must be disregarded.”¹³⁹

The “primary elements” to support a theory of mere continuation include “the common identity of the officers, directors, or stockholders of the predecessor and successor corporations, and the existence of only one corporation at the completion of the transfer.”¹⁴⁰ The test is conjunctive; a plaintiff must show common identity of fiduciaries or ownership, and that only one entity exists post-transfer. Here, the record shows no overlap in officers, at most an overlap in one of six directors, and a

¹³⁶ *Fountain v. Colonial Chevrolet Co.*, 1988 WL 40019, at *8 (Del. Super. Apr. 13, 1988).

¹³⁷ *Spring Real Est., LLC v. Echo/RT Hldgs., LLC*, 2013 WL 6916277, at *5 (Del. Ch. Dec. 31, 2013) (citation omitted).

¹³⁸ *Fountain*, 1988 WL 40019, at *8 (emphasis added).

¹³⁹ *Simple Glob., Inc. v. Brathwait Watches, Inc.*, 2022 WL 100363, at *2 (Del. Super. Jan. 10, 2022); see also *Magnolia’s at Bethany, LLC v. Artesian Consulting Engineers*, 2011 WL 4826106, at *3 (Del. Super. Sept. 19, 2011).

¹⁴⁰ *Spring Real Est.*, 2013 WL 6916277, at *5.

different ownership base. Boomerang also remained an entity with its own assets and agents until 2023.

a. Officers

Boomerang had three officers: James Tregenza (CEO), Thomas Edgeller (CFO), and Telmo Souza (CTO).¹⁴¹ Cleveland-Cliffs did not prove that any of those executives became an officer of PTC Liberty after the Article 9 sale.¹⁴²

Instead, PTC Liberty contracted to borrow PTC Alliance’s executive leadership team under the Management Services Agreement.¹⁴³ After the Article 9 sale, PTC Liberty contracted with PTC Alliance for “Executive Level Services[,]” including the provision of a “CEO, CFO, [and] General Counsel” for a period of ten years.¹⁴⁴ Through that agreement, PTC Liberty gained the services of three PTC Alliance officers: Cary Hart (CEO), Steve Bogle (CFO), and Vincent Fera (General Counsel).¹⁴⁵ None had previously been employed by Boomerang.¹⁴⁶

Cleveland-Cliffs maintains that Boomerang’s Tregenza and Souza should also be deemed PTC Liberty officers.¹⁴⁷ Tregenza and Souza were, at times, employed

¹⁴¹ Def.’s Post-trial Br. 23-24; Pls.’ Post-trial Opening Br. 35-36.

¹⁴² *See* Fera Dep. 73-76, 137.

¹⁴³ JX 309 § 2.1.

¹⁴⁴ *Id.* §§ 2.1, 4.1; *id.* at Ex. A; Hart Tr. 597-98.

¹⁴⁵ JX 309; Hart Tr. 597-98.

¹⁴⁶ Hart Tr. 596; Deckoff Tr. 120-21; Johnson Tr. 473.

¹⁴⁷ Pls.’ Post-trial Opening Br. 36-37.

as PTC Alliance’s COO and CTO, respectively.¹⁴⁸ But though they held officer roles at PTC Alliance, Cleveland-Cliffs did not prove that either served as an officer of PTC Liberty.¹⁴⁹ Nor does the Management Services Agreement contractually designate them as such. Indeed, the Management Services Agreement does not contemplate providing a COO or CTO to PTC Liberty.¹⁵⁰

No overlap in officers was proven by a preponderance of the evidence. Even if I were to treat Tregenza and Souza as PTC Liberty officers, that overlap, considered together with the other circumstances discussed below, would not establish continuity of the corporate entity.¹⁵¹ This factor cuts against finding that PTC Liberty is a mere continuation of Boomerang.¹⁵²

¹⁴⁸ *Id.*; PTO ¶¶ 91-94.

¹⁴⁹ Tregenza was hired to serve as PTC Alliance’s COO in January 2021 and resigned one month later. JX 259. PTC Liberty and PTC Alliance cannot be viewed as a single entity. “Delaware respects the corporate separateness of individual entities.” *Bocock v. INNOVATE Corp.*, 2022 WL 15800273, at *10 (Del. Ch. Oct. 28, 2022) (citing *Pauley Petrol. Inc. v. Cont’l Oil Co.*, 239 A.2d 629, 633 (Del. 1968)). This is true “even when those separate corporate entities are under common ownership and control.” *Allied Cap. Corp. v. GC-Sun Hldgs., L.P.*, 910 A.2d 1020, 1044 (Del. Ch. 2006).

¹⁵⁰ JX 309 Ex. A.

¹⁵¹ *Ross*, 2008 WL 4899226, at *4.

¹⁵² Cleveland-Cliffs also argues that Kelly Hanlon, a Vice President of Sales & Marketing, should be considered a common officer of both Boomerang and PTC Liberty. Pls.’ Post-trial Opening Br. 36-37. I conclude otherwise. The Management Services Agreement defines the scope of “Executive Level Services” provided to PTC Liberty, and Hanlon’s role is not among them. *See* JX 309 at Ex. A; *supra* note 144 and accompanying text. Even assuming she too were a common officer, that additional overlap would not change the conclusion when considered together with the other circumstances discussed below.

b. Directors

At the time of the Article 9 sale, Boomerang's six-person Board consisted of Fontana, Hart, Austin III, Steele, Tregenza, and Castellanos.¹⁵³ Deckoff previously served on Boomerang's Board but resigned on December 20, 2020, at which point Castellanos replaced him.¹⁵⁴ Eight days later, on December 28, 2020, PTC Liberty was formed with Deckoff as its sole manager, a position he has held ever since.¹⁵⁵

Cleveland-Cliffs nevertheless argues that Deckoff should be treated as a common director of both entities. Even treating him as such, the resulting overlap of one of Boomerang's six directors—considered together with the other circumstances—would not establish that PTC Liberty is a mere continuation of Boomerang.¹⁵⁶

Cleveland-Cliffs further notes that Black Diamond has the right to appoint the entire PTC Liberty board. That is true. But a sponsor's appointment right is irrelevant.¹⁵⁷ Delaware courts consider the actual overlap of director identities for

¹⁵³ PTO ¶ 29.

¹⁵⁴ Pls.' Post-trial Opening Br. 34-35; PTO ¶ 29.

¹⁵⁵ PTO ¶ 38.

¹⁵⁶ *See Ross*, 2008 WL 4899226, at *4 (finding no mere continuation despite the retention of five of seven officers and one of six directors).

¹⁵⁷ Pls.' Post-trial Opening Br. 34-35. To that end, the plaintiffs argue that board control remains with Black Diamond—in the same way that Black Diamond had the ability to appoint the majority of the Boomerang Board.

purposes of this analysis.¹⁵⁸ Cleveland-Cliffs cites no authority supporting a control-based approach.

c. Equityholders

PTC Liberty's membership is also markedly different from Boomerang's.¹⁵⁹

Boomerang's equity was held through its parent holding company, Boomerang Tube Holdings, Inc.¹⁶⁰ Its ownership structure was as follows: Fund III owned a 44.54% stake, Fund IV owned a 25.76% stake, and 21 unaffiliated minority investors held the remaining 29.70%.¹⁶¹ PTC Liberty has two members: Fund IV, which owns a 55.21% stake; and Black Diamond Capital Holdings, L.L.C. (a Black Diamond affiliate), which owns a 44.79% stake.¹⁶² Fund IV is the only equityholder common to both ownership structures.¹⁶³

Cleveland-Cliffs next argues that common ownership is present because Black Diamond, through various subsidiary funds, ultimately owns a controlling interest in both Boomerang and PTC Liberty.¹⁶⁴ This argument conflates ultimate

¹⁵⁸ *Spring Real Est.*, 2013 WL 6916277, at *5; *Ross*, 2008 WL 4899226, at *4; *Elmer v. Tenneco Resins, Inc.*, 698 F. Supp. 535, 541-42 (D. Del. 1988).

¹⁵⁹ *Spring Real Est.*, 2013 WL 6916277, at *5.

¹⁶⁰ PTO ¶¶ 23-26.

¹⁶¹ *Id.*

¹⁶² *See* JX 236.

¹⁶³ PTO ¶ 24; JX 236 at 14.

¹⁶⁴ Pls.' Post-trial Opening Br. 22, 34.

sponsor-level control with legal ownership. The mere continuation exception requires continuity in ownership between the predecessor and successor corporations.¹⁶⁵ That Black Diamond sits at the top of the corporate structure for certain investment funds does not create a “common identity” between the two entities’ equityholders.¹⁶⁶ Even if I were to entertain Cleveland-Cliffs’ premise, the fact that 29.7% of Boomerang was owned by non-Black Diamond entities—whose interests were eliminated in the transaction—defeats any finding of common identity between the two.¹⁶⁷

d. Existence of One Entity

The next factor considers whether a single entity “exist[s] . . . at the completion of the transfer.”¹⁶⁸ Cleveland-Cliffs asserts that Boomerang ceased to exist in all but name after the Article 9 sale.¹⁶⁹ The evidence adduced at trial reveals otherwise.

Boomerang remained a separate entity after the Article 9 sale. It retained the Liberty and Houston Facilities through the foreclosure sales and entered a lease with

¹⁶⁵ See *Elmer*, 698 F. Supp. at 542.

¹⁶⁶ *Spring Real Est.*, 2013 WL 6916277, at *5 (rejecting a mere continuation theory where an individual continued to serve in a management capacity across the enterprises but the entities did not share the same members or stockholders); see JX 363 ¶ 4.

¹⁶⁷ PTO ¶ 24.

¹⁶⁸ *Spring Real Est.*, 2013 WL 6916277, at *5.

¹⁶⁹ Pls.’ Post-trial Opening Br. 36-37.

PTC Liberty.¹⁷⁰ Another state court has held that retaining ownership of land and leasing the property is, by itself, insufficient to defeat the mere continuation exception.¹⁷¹ Here, there is more. Boomerang retained a bank account in its name (albeit with a small balance), and its agents continued to pay taxes and legal bills post-Article 9 sale.¹⁷² It also employed security guards to protect the Liberty and Houston Facilities.¹⁷³ Boomerang continued to exist until June 2023, when it was canceled for failure to pay franchise taxes.¹⁷⁴

e. Business Operations

As discussed, the operative test concerns the continuation of the corporate entity—not the continuation of the business operations.¹⁷⁵ To the extent business operations are relevant, however, PTC Liberty intentionally departed from Boomerang’s past practices.

¹⁷⁰ PTO ¶¶ 88, 97, 102-03.

¹⁷¹ *Milliken & Co. v. Duro Textiles, LLC*, 887 N.E.2d 244 (Mass. 2008); *see* Pls.’ Post-trial Opening Br. 31-32.

¹⁷² Fontana Tr. 408-09.

¹⁷³ *Id.* at 410.

¹⁷⁴ *Entity Details, Boomerang Tube, LLC*, Dep’t of State: Div. of Corps., <https://icis.corp.delaware.gov> (last visited June 9, 2026) (stating that Boomerang’s status as of June 1, 2023, is “Cancelled, Failure to Pay Tax”).

¹⁷⁵ *See Fountain*, 1988 WL 40019, at *9 (holding that the mere continuation exception requires continuity of the legal entity, not the business enterprise).

After the Article 9 sale, PTC Liberty worked to distance itself from Boomerang.¹⁷⁶ Although it retained Boomerang’s plant workers, PTC Liberty obtained new vendors, undertook efforts to attract new customers, and invested considerably in updating plant infrastructure.¹⁷⁷ It adopted new public-facing symbols, changing signage, logos, and thread protectors of its products.¹⁷⁸ It overhauled facility processes.¹⁷⁹ And it even refreshed Boomerang’s corporate culture.¹⁸⁰

* * *

Taken together, these factors weigh decisively against the application of the mere continuation exception. The Asset Purchase Agreement further supports that conclusion because PTC Liberty expressly declined to assume Boomerang’s liabilities when it acquired the personal property.¹⁸¹ It would be unjust to rewrite

¹⁷⁶ Deckoff Tr. 121-22; *see also* Hart Tr. 601-05.

¹⁷⁷ Hart Tr. 600-09; Johnson Dep. 111-12, 147-50.

¹⁷⁸ JX 372-77; Hart Tr. 599-605; Deckoff Tr. 118-22; Johnson Dep. 133.

¹⁷⁹ Hart Tr. 603-04.

¹⁸⁰ Deckoff Tr. 119-20 (testifying that “Boomerang (with its culture)” was to be “sent to the dustbin of history” (citing JX 256)).

¹⁸¹ JX 195 § I.2 (stating that PTC Liberty did not “assume or become responsible for any liabilities or obligations” of Boomerang).

that bargained-for allocation of risk to hold PTC Liberty liable for Boomerang's unsecured debts.¹⁸²

2. Fraud

Cleveland-Cliffs also invokes the fraud exception to the general rule against successor liability. The parties cite no Delaware precedent interpreting or applying this exception.¹⁸³ It has “only [been given] sporadic attention” in other jurisdictions.¹⁸⁴

The United States Court of Appeals for the Third Circuit's decision in *Raytech Corp. v. White* is instructive.¹⁸⁵ As the court explained, to impose liability on the successor entity under this exception, “the law in every jurisdiction . . . requires a finding that the corporate transfer of assets ‘is for the fraudulent purpose of escaping liability.’”¹⁸⁶ The exception contemplates “not the actual means of the transfer of assets or the conduct undertaken in furtherance thereof, but rather the *purpose* of

¹⁸² See *Spring Real Est.*, 2013 WL 6916277, at *5 (holding that it would be unjust to hold a successor to liability where it expressly did not assume such liability under a purchase agreement).

¹⁸³ See Pls.' Post-trial Opening Br. 38-45.

¹⁸⁴ *Springer v. Nohl Elec. Prods. Corp.*, 912 N.W.2d 1, 3 (Wis. 2018).

¹⁸⁵ 54 F.3d 187, 192 (3d Cir. 1995).

¹⁸⁶ *Id.* (emphasis omitted) (citing *Fletcher Cyclopedic of the Law of Private Corporations* § 7122 at 232).

such transfer.”¹⁸⁷ The inquiry is whether corporate assets were transferred “for the purpose, or with the intention, of escaping liability.”¹⁸⁸

The relevant transferor is Boomerang, and the Article 9 sale is the only transfer alleged to have been fraudulent.¹⁸⁹ The question, then, is whether Boomerang transferred its property with the actual intent to hinder, delay, or defraud Cleveland-Cliffs in collecting the amounts owed under the Invoices.¹⁹⁰

a. Transferor Intent

Given the dearth of precedent, Cleveland-Cliffs attempts to bridge the doctrinal gap by importing DUFTA’s approach to transferor intent into the common law successor liability analysis.¹⁹¹ It contends that “courts often look to the ‘badges of fraud’ identified by [the Uniform Fraudulent Transfer Act] to assess fraudulent intent under a successor liability claim.”¹⁹² Courts rely on such “indirect and

¹⁸⁷ *Id.*

¹⁸⁸ *Id.*

¹⁸⁹ Pls.’ Post-trial Opening Br. 39-45.

¹⁹⁰ *Cf. In re Elrod Hldgs. Corp.*, 421 B.R. 700, 710 (Bankr. D. Del. 2010) (explaining, in the fraudulent transfer context, that the debtor-transferor’s intent is generally the focus).

¹⁹¹ *See* Pls.’ Post-trial Opening Br. 39-45.

¹⁹² *See id.* at 39 (citing *Davila v. Magna Hldg. Co.*, 2000 WL 263690, at *10 (N.D. Ill. Feb. 28, 2000); *Agit Glob., Inc. v. Wham-O, Inc.*, 2014 WL 1365200, at *6 n.8 (C.D. Cal. Apr. 7, 2014)).

circumstantial evidence” because “direct evidence” of fraudulent intent “is a rarity.”¹⁹³

The “badges of fraud” include:

(1) a close relationship among the parties to the transaction; (2) a secret and hasty transfer not in the usual course of business; (3) inadequacy of consideration; (4) the transferor’s knowledge of the creditor’s claim and the transferor’s inability to pay it; (5) the use of dummies or fictitious parties; and (6) retention of control of property by the transferor after the conveyance.¹⁹⁴

Cleveland-Cliffs asserts that several of these badges are present in the circumstances surrounding the Article 9 sale. This argument fails on the most basic premise: Boomerang played no part in the Article 9 sale. The sale was noticed and completed by BDCF, acting as administrative and collateral agent for the secured lenders under the Credit Agreement.¹⁹⁵ To the extent any “badges of fraud” were present—such as a rushed, holiday-timed sale allegedly designed to chill bidding—the evidence does not establish that they reflected Boomerang’s intent. Cleveland-Cliffs instead attributes the allegedly fraudulent purpose behind the sale to Black

¹⁹³ *United States ex rel. Bunk v. Gov’t Logistics N.V.*, 842 F.3d 261, 276 (4th Cir. 2016); see *In re Elrod*, 421 B.R. at 710 (“A prima facie case of fraudulent intent can be established by offering proof of various badges of fraud.”).

¹⁹⁴ *Rosener v. Majestic Mgmt. (In re OODC, LLC)*, 321 B.R. 128, 140 (Bankr. D. Del. 2005).

¹⁹⁵ See *supra* Section I.D.

Diamond. The question, then, is whether Black Diamond's intent can be imputed to Boomerang.

b. Imputation Theory

Cleveland-Cliffs argues that it can.¹⁹⁶ But Delaware law provides no support for that theory. Cleveland-Cliffs cites no Delaware precedent in which a court has imputed one party's fraudulent intent to another for the purposes of successor liability. Once again, I look to bankruptcy law for guidance.

The United States Bankruptcy Court for the District of Delaware has held that “[w]hen the transferee or obligee is in a position to dominate or control the debtor's disposition of his property, . . . his intent to hinder, delay[,], or defraud creditors may [be] imputed to the debtor so as to render the transfer fraudulent . . . regardless of the actual purpose of the debtor transferor.”¹⁹⁷ There are three considerations. First, “the transferee must be in a position to dominate or control” the debtor.¹⁹⁸ Second, the “controlling transferee [must] possess[] the requisite intent to hinder, delay, or defraud the debtor's creditors.”¹⁹⁹ And third, “the pertinent domination and control

¹⁹⁶ See Pls.' Post-trial Opening Br. 40.

¹⁹⁷ *In re Elrod*, 421 B.R. at 709.

¹⁹⁸ *Id.* at 710 (citing *In re Adler, Coleman Clearing Corp.*, 263 B.R. 406, 442 (Bankr. S.D.N.Y. 2001)).

¹⁹⁹ *Id.*

[must] relate[] to the debtor’s disposition of his property.”²⁰⁰ All three requirements must be satisfied.²⁰¹

To establish domination or control, the relevant actor must have exercised “formal, legal control as well as functional control” over the debtor transferor.²⁰² Functional control exists where an actor “deliberately and directly exert[s] control inside the boardroom.”²⁰³ Black Diamond managed Funds III and IV, which collectively owned a majority indirect equity interest in Boomerang post-bankruptcy and held the right to appoint a majority of its Board.²⁰⁴ Those ownership and appointment rights establish formal, legal control for purposes of this analysis. But legal control alone is insufficient; functional control is also required.²⁰⁵ The functional control factor is unmet here.

²⁰⁰ *Id.*

²⁰¹ *Id.*

²⁰² *Id.* at 712; *cf. In re Syntax-Brilliant Corp.*, 2016 WL 1165634, at *6 (Bankr. D. Del. Feb. 8, 2016) (asking whether the intent of “officers and directors may be imputed to the corporation”); *In re Trib. Co. Fraudulent Conv. Litig.*, 2017 WL 82391, at *5 (S.D.N.Y. Jan. 6, 2017) (“Because all corporations must act through agents . . . courts assessing the intent of a corporation in a fraudulent conveyance claim will look to the intent of the corporate actors who effectuated the transaction on behalf of the corporation. . . .”), *aff’d*, 10 F.4th 147 (2d Cir. 2021).

²⁰³ *In re Trib. Co.*, 2017 WL 82391, at *6.

²⁰⁴ PTO ¶ 24. Fund III owned 44.54% of the stock in Boomerang’s parent, and Fund IV owned 25.76%. *Id.*; *see also supra* note 6 and accompanying text.

²⁰⁵ *See In re Elrod*, 421 B.R. at 712 (“Courts have required formal, legal control *as well as functional control*.” (emphasis added)).

Cleveland-Cliffs relies on *In re Sackman Mortgage Corp.*, a New York bankruptcy court decision, to argue that a foreclosing creditor's intent can be imputed to the debtor.²⁰⁶ There, however, the creditor whose intent was at issue was also the transferee of the challenged property.²⁰⁷ Here, PTC Liberty was the transferee, Funds III and IV were the secured lenders under the Credit Agreement, and Black Diamond managed those Funds. Black Diamond itself was neither the transferee nor the obligee. Cleveland-Cliffs therefore asks me to extend the imputation doctrine to the intent of Black Diamond based on its relationships with the relevant obligees and transferee.

I need not decide whether the imputation doctrine extends that far. Even assuming that Black Diamond's relationship with Funds III and IV permits its intent to be considered for purposes of the doctrine, Cleveland-Cliffs has not shown that Black Diamond exercised the requisite functional control over Boomerang.

Funds III and IV acted in their capacities as secured creditors in the Article 9 sale.²⁰⁸ The Credit Agreement gave them contractual rights to accelerate the debt and foreclose on the collateral if Boomerang did not satisfy minimum EBITDA requirements, which they exercised through BDCF as administrative and collateral

²⁰⁶ See *In re Sackman Mortg. Corp.*, 158 B.R. 926, 938 (Bankr. S.D.N.Y. 1993).

²⁰⁷ *Id.*

²⁰⁸ Deckoff Tr. 109-10 ("I was a lender. And under the law, our rights to foreclose on a collateral of this nature is Article 9."); see *supra* Section I.D.

agent.²⁰⁹ “[O]ne who [is] both a creditor and a fiduciary . . . does not by reason of that status alone have special limitations imposed upon the exercise of his or her creditor rights.”²¹⁰

To separate the various entities’ roles in the Article 9 sale, an “information barrier” was erected between “the lender side” and “the company side.”²¹¹ Black Diamond walled off personnel supporting Boomerang’s Board from those working on the Article 9 sale.²¹² It created separate email accounts for all Boomerang-related communications and required Board-side personnel to abandon any activities pertaining to Black Diamond’s lending operations.²¹³ The Boomerang Board only learned about the Article 9 sale after it was noticed.²¹⁴

The secured lenders directed the exercise of their creditor rights, and BDCF conducted the Article 9 sale as agent. But Cleveland-Cliffs did not prove that Black Diamond exerted functional control over Boomerang or its Board in disposing of Boomerang’s property. Because Cleveland-Cliffs has not established this threshold requirement, I need not reach whether Black Diamond—or any affiliated transferee

²⁰⁹ PTO ¶ 75; JX 54.

²¹⁰ *Odyssey P’rs, L.P. v. Fleming Cos.*, 1996 WL 422377, at *3 (Del. Ch. July 24, 1996).

²¹¹ Tanna Tr. 498-99; Fontana Dep. 149-50.

²¹² Fontana Dep. 149 (testifying that Black Diamond worked to “keep[] the two sides of the wall separate”).

²¹³ *Id.* at 148-51.

²¹⁴ *See* Hart Tr. 594; Fontana Dep. 152-53, 267-69.

or obligee—possessed the requisite fraudulent intent. Accordingly, Cleveland-Cliffs’ imputation theory fails.

III. CONCLUSION

Cleveland-Cliffs did not prove that the property transferred at the Article 9 sale was a qualifying “asset” under DUFTA. Nor did it prove that PTC Liberty should be held liable for Boomerang’s debts under an exception to the general rule against successor liability. Because Cleveland-Cliffs did not prevail on its claims, I need not reach its request for damages or attorneys’ fees. Judgment is entered for PTC Liberty on all counts.

The parties must confer on and submit a proposed form of final order implementing this decision within 30 days.