IN THE SUPERIOR COURT OF THE STATE OF DELAWARE

BRYAN PARK EDUCATION LLC, Plaintiff, v. MASTERS ACADEMY INTERNATIONAL, LLC and COGNITA LIMITED, Defendants.	)	C.A. No. N26C-01-107 KMM (CCLD)

Date Submitted: August 10, 2026
Date Decided: November 4, 2026

Upon Defendants' Motion to Dismiss –
GRANTED in part, DENIED in part

MEMORANDUM OPINION AND ORDER

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Miller, J.

I. INTRODUCTION

Masters Academy International, LLC ("Masters") engaged Bryan Park Education LLC ("Bryan Park") to seek out investors to build a private school in Massachusetts, for which it would be paid a finder's fee if successful. Separately, Cognita Limited ("Cognita") entered into an agreement with Jose Tomé to find new investment opportunities, for which Mr. Tomé would earn a finder's fee if successful. Mr. Tomé is a member of Bryan Park. Based on Bryan Park's introduction of Masters to Cognita, it acquired a majority interest in Masters, triggering the finder's fee under the Masters/Bryan Park agreement. By its terms, no fee was due under the Tomé/Cognita agreement. Masters failed to pay the finder's fee, allegedly at Cognita's direction.

Seeking to collect its fee, Bryan Park asserts claims for breach of contract and *quantum meruit* against Masters and tortious interference with contract and tortious interference with prospective economic advantage against Cognita.

Cognita's agreement with Mr. Tomé contains a Wales and England forum selection clause. The Masters/Bryan Park agreement has no forum selection clause. Arguing that the Cognita agreement's forum selection clause is binding on Bryan Park (which Mr. Tomé allegedly controls), defendants move to dismiss this action. Bryan Park, however, does not assert a claim under the Cognita/Tomé agreement

and there is no basis to bind non-signatory Bryan Park to that agreement. Thus, the forum selection clause does not win dismissal for defendants.

Separately, Cognita seeks dismissal for lack of personal jurisdiction, arguing that Delaware's long-arm statute is not satisfied. Because Bryan Park has not shown that Cognita has the requisite contacts with this state, it must be dismissed.

Masters' arguments do not meet with the same success. With dismissal of Cognita, Masters argues that the entire action must be dismissed because Cognita is a necessary and indispensable party. Bryan Park, however, may obtain full relief on its breach of contract and *quantum meruit* claims against Masters. Cognita is not a necessary party. Thus, Masters' argument on this point fails.

Finally, Masters argues the *quantum meruit* claim, which is pled in the alternative, cannot stand alongside the breach of contract claim and therefore, must be dismissed. But, Masters raises questions over the enforceability of the Masters/Bryan Park agreement, at least in part. Therefore, in the exercise of discretion, the Court will allow the *quantum meruit* claim to proceed. Accordingly, the motion to dismiss is ***GRANTED, in part*** and ***DENIED, in part.***

II. FACTUAL BACKGROUND[1]

A. *The Parties*

Bryan Park, a New Jersey limited liability company, consults and advises companies worldwide in the field of private education.[2]

Masters is located in Marlboro, Massachusetts.[3] Before Cognita's investment in Masters, it was a Massachusetts limited liability company. With the closing of the investment, Masters was domesticated in Delaware and became a Delaware limited liability company.[4]

Cognita, a private limited company organized under the laws of England and Wales, invests in, acquires, and operates private schools in Europe, the United States, Asia, Latin America, and the Middle East.[5]

B. *The Bryan Park/Masters Agreement*

In early 2024, Masters was seeking investors to develop a grade 6-12 private school and sports academy in Stow, Massachusetts.[6] To that end, on September 2,

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[1] The facts are derived from the allegations in the Complaint, the relevant contractual agreements and the Certificate of Good Standing for Bryan Park issued by the New Jersey Department of Treasury, submitted through the Transmittal Affidavit of David Oliwenstein ("Oliwenstein Aff.") (D.I. 7). *Windsor I, LLC v. CWCapital Asset Mgmt. LLC*, 238 A.3d 863, 873 (Del. 2020) (on a Rule 12(b)(6) motion, the court may consider documents outside the complaint that are "integral to a plaintiff's claim and incorporated into the complaint"); *Loveman v. Nusmile, Inc.*, 2009 WL 847655, at *2 (Del. Super. Mar. 31, 2009) (on a Rule 12(b)(3) motion the court may consider extrinsic evidence and is not "shackled to the plaintiff's complaint").
[2] Complaint (D.I. 1) ("Compl.") ¶¶ 6, 15; Oliwenstein Aff., Ex. 1 (Masters Agreement).
[3] *See* Masters Agreement.
[4] Compl. ¶ 7.
[5] *Id.* ¶¶ 8, 20.
[6] *Id.* ¶ 16.

2024, Masters entered into a finder's fee agreement with Bryan Park (the "Masters Agreement")[7] pursuant to which, Bryan Park agreed to use its best efforts to introduce potential investors or donors to Masters.[8] For each introduction resulting in an investment or donation, Bryan Park earned a fee (the "Finder's Fee"),[9] due within 7 days of Masters receiving the funds.[10]

C. *The Jose Tomé/Cognita Agreement*

On April 3, 2025, Cognita and Jose Tomé ("Tomé") entered into a finder's fee agreement (the "Cognita Agreement"),[11] which required Tomé to attempt to introduce Cognita to schools identified in Schedule 1, which were then currently available for acquisition.[12] Masters was listed on Schedule 1.[13] Upon the Closing of a Potential Transaction[14] involving a listed school, Cognita would pay Tomé a

[7] *Id.* ¶ 17; *see also* Masters Agreement. The Masters Agreement is governed by New York law. Masters Agreement § 8.
[8] Masters Agreement § 1; Compl. ¶ 18.
[9] Masters Agreement § 2; Compl. ¶ 19.
[10] Masters Agreement § 3.
[11] Oliwenstein Aff., Ex. 2 (Cognita Agreement).
[12] *Id.* § 3.1. Tomé attempted to submit prior iterations of this contract in support of Bryan Park's arguments. *See* Declaration of Jose Tomé (D.I. 15). The declaration, however, does not comply with Delaware law as it is not under oath. While Superior Court permitted the use of unsworn declarations in response to the Covid-19 pandemic, Amended Standing Order No. 8 expired as of September 1, 2022. https://courts.delaware.gov/forms/download.aspx?id=154548. The statute, 10 *Del. C.* § 3927(a), permits Unsworn Declarations but limits the use of such declarations "[t]o the extent authorized by court rule." No Superior Court rule authorizes the use of unsworn declarations. Accordingly, the Court does not consider the Tomé declaration or its attachments.
[13] Cognita Agreement, Schedule 1.
[14] Capitalized terms not defined herein shall have the meaning ascribed to them in the corresponding agreement.

finder's fee according to the parameters identified in Schedule 1.[15] No fee would be due if Tomé "entered into a sellside [*sic*] agreement" with an acquisition target.[16]

The Cognita Agreement's forum selection clause requires the parties to "settle any dispute or claim that arises out of, or in connection with, this [agreement] or its subject matter or formation" in the courts of England and Wales.[17]

D. ***Cognita Acquires a Controlling Interest in Masters.***

In October 2024, Bryan Park introduced Masters to Cognita.[18] Masters and Cognita then negotiated and closed on a transaction, pursuant to which Cognita acquired a majority and controlling interest in Masters (the "Transaction").[19]

Shortly after closing on the Transaction, Masters, then a Massachusetts limited liability company, merged into a Delaware limited liability company on June 25, 2025, with the Delaware-Masters entity as the surviving entity.[20] Masters assumed all liabilities and obligations of the predecessor entity.[21]

E. ***Masters Fails to Pay Bryan Park's Finder's Fee.***

In June 2025, Masters acknowledged Bryan Park's right to the Finder's Fee under the Masters Agreement but advised that Cognita was displeased with the

[15] *See* Cognita Agreement, Schedule 1.
[16] *Id.* § 5.
[17] *Id.* § 11.1.
[18] Compl. ¶ 23.
[19] *Id.* ¶ 25.
[20] *Id.* ¶¶ 7, 36.
[21] *Id.* ¶ 36.

amount of the fee and demanded that the Finder's Fee be reduced.[22] Bryan Park refused to reduce its fee and thereafter, Cognita instructed Masters not to pay Bryan Park.[23] Bryan Park seeks to recover its Finder's Fee in this action.

III. THE PARTIES' CONTENTIONS

Defendants contend that the complaint must be dismissed on two grounds: (1) the Cognita Agreement's forum selection clause is binding on Bryan Park therefore, its claims must be asserted in a court in Wales and England; and (2) this Court lacks personal jurisdiction over Cognita, which is a necessary and indispensable party.[24] Because Cognita must be dismissed, defendants argue that this entire action must be dismissed.

Separately, Masters seeks dismissal of the *quantum meruit* claim because a valid and enforceable contract governs the Bryan Park-Masters relationship.[25]

Bryan Park argues that the Cognita Agreement's forum selection clause is not binding on it as a non-signatory and none of the exceptions to bind a non-signatory, apply.[26] Bryan Park contends that personal jurisdiction over Cognita exists because it transacted business in Delaware (through Masters) and committed a tortious act

[22] *Id.* ¶¶ 28-29.
[23] *Id.* ¶¶ 32-35.
[24] Defendants' Opening Brief (D.I. 7) ("OB") at 8-22; Defendants' Reply Brief (D.I. 17) ("RB") at 5-21.
[25] OB at 22-23; RB at 21-23.
[26] Plaintiff's Answering Brief (D.I. 15) ("AB") at 8-15.

within the state.[27] If Cognita is dismissed for lack of jurisdiction, Bryan Park argues, Cognita is not an indispensable party and therefore, it may proceed solely against Masters.[28] Finally, Bryan Park argues that because Masters has put the enforceability of the Masters Agreement at issue, the *quantum meruit* claim is permissible at this stage.[29]

IV. DISCUSSION

A. *Is the Cognita Agreement's forum selection clause binding on Bryan Park?*

Defendants argue that the Cognita Agreement's forum selection clause is binding on Bryan Park. This is so because Tomé is a party to that contract and he is the registered agent for, and identified as a principal of, Bryan Park, and the claims arise out of Tomé facilitating Cognita's investment in Masters.[30]

Bryan Park counters that defendants are wrong because it is not a party to the Cognita Agreement and Bryan Park's claims arise from a breach of the *Masters Agreement*.[31]

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;[32] (2) … the [non-signatory] is a third-party beneficiary or

[27] *Id.* at 15-19.
[28] *Id.* at 19-22.
[29] *Id.* at 22-23.
[30] OB at 8-15.
[31] AB at 8-15.
[32] Bryan Park does not challenge the validity of the forum selection clause.

is 'closely related to' the contract; and (3) … the claim arises from the [non-signatory]'s standing relating to the agreement."[33]

Arguing that Bryan Park is "closely related" to Tomé because he controls Bryan Park (he signed the Masters Agreement on behalf of Bryan Park), defendants contend that it was foreseeable that Bryan Park would be bound by the Cognita Agreement.[34] Further, by facilitating the acquisition of Masters, both Tomé and Bryan Park were entitled to a fee under the agreements, and Tomé should not be permitted to escape the Cognita Agreement's forum selection clause by creatively pleading around it.[35] Accordingly, defendants argue, Bryan Park should be estopped from challenging the applicability of the forum selection clause.

Not so, retorts Bryan Park. The Masters Agreement and the Cognita Agreement are between different parties and the claims asserted here have no

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[33] *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).

[34] On a motion to dismiss for improper venue under Rule 12(b)(3), the court must "assume as true all the facts pled in the complaint and view those facts and all reasonable inferences drawn from them in the light most favorable to the plaintiff." *Loveman*, 2009 WL 847655, at *2. The court, however, is not limited to the allegations in the complaint and may consider extrinsic evidence.'" *Sun Life Assurance Co. of Canada - U.S. Operations Holdings, Inc. v. Grp. One Thousand One, LLC*, 206 A.3d 261, 265 (Del. Super. 2019) (quoting *Airbase Carpet Mart, Inc. v. AYA Associates, Inc.,* 2015 WL 9302894, at *4 (Del. Super. Dec. 15, 2015)).

[35] *Id.* at 13-14; RB at 9.

connection to the Cognita Agreement. Bryan Park accuses defendants of attempting to conflate the separate agreements essentially into one.[36]

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.[37] Defendants do not argue a direct benefit, thus, the Court focuses on foreseeability.

1. *Foreseeability*

The foreseeability prong "operates as a species of equitable estoppel."[38] It "seeks to foreclose an 'end-run around an otherwise enforceable [f]orum [s]election [p]rovision.'"[39] Delaware courts apply the

> foreseeability prong … 'when the circumstances surrounding the transaction make it clear that the parties expected the forum selection provision to bind the non-signatory.' Courts 'apply the foreseeability test cautiously.' Thus, when considering 'foreseeability [] as a standalone basis for satisfying the closely-related test ... the foreseeability inquiry [ ] require[s] that the signatory control the non-signatory.'[40]

"As opposed to the broad, fact-intensive assessment that typically accompanies foreseeability analyses in other legal settings, only two specific

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[36] AB at 14-15.
[37] *RGIS Intern'l Transition Holdco, LLC*, 2025 WL 3560688, at *5.
[38] *BAM Int'l, LLC*, 2021 WL 5905878, at *12; *Chumash Cap. Invest. LLC v. Grand Mesa P'rs LLC*, 2024 WL 1554184, at *7 (Del. Super. Apr. 10, 2024).
[39] *Neurvana Med., LLC v. Balt USA, LLC*, 2019 WL 4464268, at *5 (Del. Ch. Sept. 18, 2019) (quoting *Ashall Homes Ltd. v. ROK Entm't Grp. Inc.*, 992 A.2d 1239, 1248 (Del. Ch. 2010)).
[40] *Cúram, LLC v. Gray*, 2025 WL 733256, at *6 (Del. Super. Mar. 6, 2025) (citations omitted).

scenarios suffice in this context:"[41] (1) where the non-signatory defendant seeks to enforce a forum selection clause against the plaintiff-signatory; and (2) where the non-signatory "is controlled by a signatory and the non-signatory bears a clear and significant connection to the subject matter of the agreement."[42] "Delaware courts have declined to expand this 'narrowly constrained' doctrine any further than" these two factual scenarios.[43]

Control sufficient to bind a non-signatory has been found where a parent entity enters into a contract (with a forum selection clause) and its subsidiary performs the obligations under the contract.[44] As the *Florida Chemical* court noted:

> The foreseeability inquiry "recognizes that parties to agreements do not always think about having controlled entities sign on to a deal, or they do not take the time to have them do so, because it is readily apparent that the controller is acting on behalf of the entities on his side of the deal."[45]

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[41] *Chumash Cap. Invest. LLC*, 2024 WL 1554184, at *10.

[42] *Id.* (cleaned up) (quoting *Sustainability Partners LLC v. Jacobs*, 2020 WL 3119034, at *7 (Del. Ch. June 11, 2020); *Yangaroo Inc.*, 2024 WL 2791100, at *7 (quoting *Florida Chem. Co., LLC*, 262 A.3d at 1090) ("'(i) the non-signatory accepted a direct benefit from the agreement or (ii) the non-signatory had a close relationship to the agreement, a signatory to the agreement controlled the non-signatory, and the circumstances establish that the signatory agreed to the forum selection provision on behalf of its controlled affiliate.'").

[43] *Chumash Cap. Invest. LLC*, 2024 WL 1554184, at *10; *Partners & Simons, Inc. v. Sandbox Acquisitions, LLC*, 2021 WL 3161651, at *7 (Del. Ch. July 26, 2021) (citing *Neurvana Med., LLC*, 2019 WL 4464268, at *7).

[44] *Florida Chem. Co., LLC*, 262 A.3d at 1092.

[45] *Id.* (quoting *Imodules Software, Inc. v. Essenza Software, Inc.*, 2017 WL 6596880, at *3 (Del. Ch. Dec. 22, 2017)).

The *Florida Chemical* court warned, however, the "foreseeability test does not extend to all non-signatories that a signatory happens to control."[46] As noted above, the controlled non-signatory must have a "clear and significant" connection to the subject matter of the agreement.[47]

Defendants' argument that Tomé controls Bryan Park is based on Tomé being identified as a principal member in Bryan Park's Certificate of Good Standing issued by New Jersey.[48] For purposes of this argument, the Court accepts that Tomé controlled Bryan Park. But control alone is not sufficient. While the subject matter of the Cognita Agreement may have generally been the same as the Masters Agreement (finding an acquisition partner), there is no factual support for the proposition that Tomé (the controller) was acting on Bryan Park's (the controlled) behalf when he entered into the agreement with Cognita. By the terms of the Cognita Agreement, Tomé is not entitled to seek a fee from Cognita because of the existence of a sell-side agreement.[49] Accordingly, it is clear that the parties recognized that another, unrelated contract may control payment of a fee.[50] That is what occurred here.

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[46] *Id.*
[47] *Id.*; *Chumash Cap. Invest. LLC*, 2024 WL 1554184, at *10.
[48] OB at 13; Oliwenstein Aff., Ex. 3.
[49] Cognita Agreement § 5.
[50] Defendants' "group" contract theory fares no better. Delaware courts have found that where multiple contracts govern the parties' relationship (some with forum selection clauses and some without), the forum selection clause may apply to all contractual disputes. *See Ingres Corp. v. CA, Inc.*, 8 A.3d 1143, 1145 (Del. 2010); *see also Centene Corp. v. Accellion, Inc.*, 2022 WL 898206,

Foreseeability is narrowly construed. Defendants fail to establish a clear and significant connection between Bryan Park and the Cognita Agreement.[51]

2. *Do the claims arise from Bryan Park's standing relating to the Cognita Agreement?*

Defendants attempt to link Tomé's control of Bryan Park with the subject matter of the Cognita Agreement—the Transaction—to argue that Bryan Park and Tomé "had overlapping interests in ensuring that Cognita acquired" Masters.[52] Bryan Park counters that its claims here do not relate to the Cognita Agreement, and therefore, this factor is also not satisfied.

Bryan Park seeks to enforce its contract with Masters but seeks no relief under the Cognita Agreement. Bryan Park's claims against Cognita arise out of its alleged interference with the *Masters Agreement*. Thus, the Cognita Agreement will have no bearing on the adjudication of Bryan Park's claims. Thus, defendants also fail to

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at *10 (Del. Ch. Mar. 28, 2022) (finding that a later executed contract (without a forum selection clause) did not supersede the earlier agreement between parties, which contained such a clause). The contracts here cannot be considered a "group" of contracts. The Masters Agreement and Cognita Agreement were entered into by distinct parties on both sides of the transaction with only Tomé and Cognita agreeing and acknowledging the England and Wales forum selection provision. The Masters Agreement was not a "later executed" contract to the Cognita Agreement.

[51] Defendants also rely on the fact that Tomé signed the Masters Agreement on behalf of Bryan Park. OB at 5, 13. Tomé signing the Masters Agreement for Bryan Park, however, does nothing to establish foreseeability. *See Cúram, LLC*, 2025 WL 733256, at *7 (court refused to apply foreseeability doctrine to the non-signatory controller who signed the agreement on behalf of the contract-party entity because it would disregard fundamental principles of Delaware corporate law of the separate legal existence of artificial entities).

[52] OB at 13.

satisfy this factor. Accordingly, the forum selection clause is not binding on Bryan Park.

B. *Does Jurisdiction Over Cognita Exist?*

1. *Rule 12(b)(2) standard*

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 in its complaint facts establishing a court's personal jurisdiction over [a non-resident] defendant."[53] However, upon a motion to dismiss under Rule 12(b)(2), the plaintiff bears the burden of establishing jurisdiction over the nonresident defendant.[54] The court is not limited to the pleadings and may consider affidavits and any discovery of 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."[55]

Cognita argues that there is no personal jurisdiction over it because Delaware's long-arm statute is not satisfied as it has not transacted business, or

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[53] *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)).
[54] *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).
[55] *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.

caused a tortious injury, within the state. And, domesticating Masters in Delaware after the Transaction is insufficient, as it bears no nexus to Bryan Park's claims.[56]

Bryan Park argues that Section 3104(c)(1) of the long-arm statute is satisfied because Cognita transacted business by directing the re-organization of Masters in Delaware after the Transaction and then exerted operational control over Masters, including directing it not to pay Bryan Park. Bryan Park further argues that Section 3104(c)(3) is satisfied because Cognita caused a tortious injury in Delaware by directing Masters (now a Delaware entity) to breach its contractual obligations.[57] Finally, it argues 3104(c)(4) is satisfied by Cognita's ongoing operational control over Masters.

Determining jurisdiction over a nonresident requires a two-step analysis.[58] "First, the court must consider whether the Delaware [long-arm s]tatute applies, and next must evaluate whether subjecting a defendant to jurisdiction in Delaware violates the due process clause of the fourteenth amendment."[59] Delaware's long-arm statute permits a court to exercise personal jurisdiction where a plaintiff's claim "'arises from' a 'jurisdictional act' enumerated in the statute."[60] "Delaware courts

[56] OB at 16-19.
[57] AB at 17.
[58] *LaNuova D & B, S.p.A. v. Bowe Co., Inc.*, 513 A.2d 764, 768 (Del. 1986).
[59] *Id.*
[60] *Mobile Diagnostic Grp. Holdings, LLC v. Suer*, 972 A.2d 799, 804 (Del. Ch. 2009) (quoting *Sprint Nextel Corp. v. iPCS, Inc.*, 2008 WL 2737409, at *8 (Del. Ch. July 14, 2008)).

construe the long-arm statute broadly 'to confer jurisdiction to the maximum extent possible under the Due Process Clause.'"[61]

2. *Section 3104(c)(1)*

Section 3104(c)(1) permits a court to exercise jurisdiction over a nonresident "who in person or through an agent: (1) transacts any business or performs any character of work or service in the State."[62] Under this subsection, a single-act or omission in Delaware is sufficient to establish jurisdiction ***if*** the cause of action arises out of the defendant's in-state conduct.[63] As such, for example, ownership or formation of a Delaware entity may constitute "transacting business" where the cause of action arises from the creation or operation of the entity.[64]

The acts on which Bryan Park relies are Cognita directing the domestication of Masters in Delaware and Cognita's subsequent operational control over Masters.[65] These acts are insufficient. First, while forming or domesticating an artificial entity in Delaware can be sufficient to constitute transacting business, to satisfy Section

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[61] *EBG Holdings LLC v. Vredezicht's Gravenhage 109 B.V.*, 2008 WL 4057745, at *5 (Del. Ch. Sept. 2, 2008).
[62] 10 *Del. C.* § 3104(c)(1).
[63] *Philadelphia Indem. Ins. Co. v. Air Vent, Inc.*, 2025 WL 2170930, at *4 (Del. Super. July 30, 2025); *EBG Holdings LLC*, 2008 WL 4057745, at *5 (citing *Cornerstone Techs., LLC v. Conrad*, 2003 WL 1787959, at *9 (Del. Ch. Mar. 31, 2003)); *In re Gen. Motors (Hughes) S'holder Litig.,* 2005 WL 1089021, at *22 (Del. Ch. May 4, 2005).
[64] *EBG Holdings LLC*, 2008 WL 4057745, at *5 (quoting *AeroGlobal Capital Mgmt., LLC v. Cirrus Indus., Inc.*, 871 A.2d 428, 439 (Del. 2005)). *But see Hughes,* 2005 WL 1089021, at *22 ("Delaware law is clear that if the only link between the parent corporation and the alleged wrong is the parent's ownership of stock in the subsidiary, that is insufficient to establish personal jurisdiction under § 3104(c)(1).").
[65] AB at 16.

3104(c)(1), that act must be in furtherance of the scheme or claim alleged in the complaint.[66] Whether Masters remained a Massachusetts entity or became a Delaware entity has no bearing on Bryan Park's claim that Cognita interfered with Bryan Park's contract or economic advantage.

Second, the alleged "control and influence over [Masters,]"[67] did not occur in Delaware or have any connection to the only action that did occur in Delaware—the domestication of Masters. Accordingly, Section 3104(c)(1) is not satisfied.

3. *Section 3104(c)(3)*

Under Section 3104(c)(3), a court may exercise jurisdiction over a nonresident where it "[c]auses tortious injury in the State by an act or omission in the State."[68]

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[66] *See Cairns v. Gelmon*, 1998 WL 276226, at *1-3 (Del. Ch. May 21, 1998) (defendant's act of forming a Delaware corporation to implement a joint venture and then issuing all of its stock to defendant and his allies in furtherance of the scheme to defraud plaintiffs, satisfied 10 *Del. C.* § 3104(c)(1)); *Hughes*, 2005 WL 1089021, at *22 (the non-resident's actions in negotiating and structuring the transaction on behalf of its subsidiaries and being a signatory to the merger agreement which resulted in filing a certificate of merger in Delaware (a necessary act to achieve the merger), and where the claims asserted arose out of the merger, section 3104(c)(1) was satisfied); *Matthew v. Fläkt Woods Grp. SA*, 56 A.3d 1023, 1027-28 (Del. 2012) (filing limited liability company's certificate of cancelation was "the transacting of business in Delaware" where the dissolution of the entity was part of the scheme to divest plaintiff of his interest in the entity).

[67] *See* Compl. ¶¶ 49 ("Upon information and belief, in an effort to leverage Cognita's control and influence over [Masters] to reduce payment obligations to Plaintiff, Cognita intentionally encouraged, instructed, and/or induced Masters Academy not to pay Plaintiff the Fee owed by [Masters] under the [Masters] Agreement."), 56 ("Upon information and belief, Cognita intentionally interfered with Plaintiff's prospective economic relationship by wrongfully encouraging, instructing, or inducing Masters Academy not to pay Plaintiff, using its investment leverage and influence.").

[68] 10 *Del. C.* § 3104(c)(3).

Section 3104(c)(3) confers specific jurisdiction, requiring the nonresident to have acted within Delaware and the resulting injury to have occurred in the state.[69]

Bryan Park's argument is premised on Cognita directing Masters, a Delaware entity, to breach the Masters Agreement.[70] Bryan Park alleges no facts that Cognita acted within the state or that any injury occurred in Delaware. Therefore, Bryan Park fails to establish that Section 3104(c)(3) is satisfied.

4. *Section 3104(c)(4)*

Section 3104(c)(4) supports personal jurisdiction over a nonresident where it "[c]auses 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 business . . . in the State . . .."[71] Section 3104(c)(4) is a general jurisdiction statute which requires a "persistent

[69] *Ross v. Earth Movers, LLC*, 288 A.3d 284, 294 (Del. Super. 2023) (citing *Boone v. Oy Partek Ab*, 724 A.2d 1150, 1155 (Del. Super. 1997), *aff'd,* 707 A.2d 765 (Del. 1998)) ("General jurisdiction is based on the relationship between the forum and the party.").
[70] Compl. ¶¶ 32, 49.
[71] 10 *Del. C.* § 3104(c)(4).

course of conduct" amounting to "substantial and continuous activity in Delaware."[72]

Bryan Park alleged no facts that Cognita engaged in a "persistent course of conduct" in Delaware.[73] Its "ongoing acquisition of and operational control over" Masters is insufficient.[74] Accordingly, Section 3104(c)(4) is not satisfied.[75] Because the long-arm statute is not satisfied, Cognita must be dismissed.

5. *Bryan Park requests leave to take discovery.*

Bryan Park requests permission to engage in jurisdictional discovery. It argues that the full extent of Cognita's contacts with Delaware, "including the degree of control exercised over [Masters], communications with [Masters'] management in Delaware, financial transactions with the Delaware entity, and the circumstances of the redomestication to Delaware[,]" is not known.[76]

If the party seeking jurisdictional discovery "presents factual allegations that suggest 'with reasonable particularity' the possible existence of the requisite

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[72] *HMG/Courtland Properties, Inc. v. Gray*, 729 A.2d 300, 310 (Del. Ch. 1999); *CLP Toxicology, Inc. v. Casla Bio Holdings LLC*, 2020 WL 3564622, at *15 (Del. Ch. June 29, 2020) (citation omitted) (the defendant must have had contacts with Delaware "that are so extensive and continuing that it is fair and consistent with state policy to require that the defendant appear here and defend a claim.").

[73] *CLP Toxicology, Inc.*, 2020 WL 3564622, at *15.

[74] *Id.* ("A non-resident's ownership interest in a Delaware entity, without more, does not provide a basis for the 'persistent course of conduct in [Delaware]' required for general jurisdiction.").

[75] Because Bryan Park fails to establish jurisdiction under the long-arm statute, the Court need not reach the second step in the personal jurisdiction analysis.

[76] AB at 19.

'contacts between [the parties] and the forum state,'" the request should be granted.[77] The problem for Bryan Park is that none of these areas of discovery (even if they show the contacts Bryan Park hopes to establish), will give Bryan Park a jurisdictional hook. The domestication of Masters in Delaware is unrelated to Bryan Park's claims, and the other contacts *with Masters* (located in Massachusetts) would not establish contacts *with Delaware*. Accordingly, the request for jurisdictional discovery is DENIED.

C. *Without Cognita, must this case be dismissed?*

With no jurisdiction over Cognita, defendants argue that the complaint must be dismissed in full because Cognita is a necessary and indispensable party.[78] They assert that without Cognita, whose conduct is allegedly at the core of the remaining claims, complete relief cannot be obtained. Further, defendants argue, as the majority owner of Masters, Cognita has a strong interest in the litigation and will be unable to protect its interest if the action proceeds without it.[79]

Bryan Park counters that Cognita is not a necessary party because Bryan Park's remaining claims arise out of the breach of the Masters Agreement, to which Cognita is not a party.[80] Further, Bryan Park asserts that Cognita's interests will not

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[77] *CLP Toxicology, Inc.*, 2020 WL 3564622, at *15 (quoting *Toys "R" Us, Inc. v. Step Two, S.A.*, 318 F.3d 446, 456 (3d Cir. 2003)).
[78] OB at 19.
[79] *Id.* at 20.
[80] AB at 19-20.

be impaired because full contractual damages can be awarded solely against Masters.[81]

An action may be dismissed under Superior Court Rule 12(b)(7) for failure to join a necessary and indispensable party under Rule 19.[82] In determining whether a party is necessary and indispensable, the court undertakes a two pronged inquiry.[83] First, the court must determine if the party is "necessary" under Rule 19(a).[84] A party is necessary if

> (1) in the person's absence complete relief cannot be accorded among those already parties, or (2) the person claims an interest relating to the subject of the action and is so situated that the disposition of the action in the person's absence may (i) as a practical matter impair or impede the person's ability to protect that interest or (ii) leave any of the persons already parties subject to a substantial risk of incurring double, multiple, or otherwise inconsistent obligations by reason of the claimed interest.[85]

If the court finds that the party is necessary, and joinder is not feasible, under Rule 19(b), the court must determine if "in equity and good conscience the action should proceed among the parties before it, or should be dismissed …."[86] In this analysis, the court considers:

> (1) to what extent a judgment rendered in the person's absence might be prejudicial to the person or those already parties; (2) the extent to

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[81] *Id.* at 20.
[82] Super. Ct. Civ. R. 12(b)(7); *Roberts v. Delmarva Power & Light Co.*, 2007 WL 2319761, at *2 (Del. Super. Aug. 6, 2007).
[83] *Fedirko v. G&G Const., Inc.*, 2007 WL 1784184, at *2 (Del. Super. May 18, 2007).
[84] *Id.*
[85] Super. Ct. Civ. R. 19(a); *Fedirko*, 2007 WL 1784184, at *2.
[86] *Fedirko*, 2007 WL 1784184, at *2 (quoting Super. Ct. Civ. R. 19(b)).

> which, by protective provisions in the judgment, by the shaping of relief, or other measures, the prejudice can be lessened or avoided; (3) whether a judgment rendered in the person's absence will be adequate; and (4) whether the plaintiff will have an adequate remedy if the action is dismissed for nonjoinder.[87]

The party asserting the 12(b)(7) defense bears the initial burden to show that the party at issue is "needed for just adjudication."[88] "[I]f joinder is possibly required, then 'the party whose interests are adverse to the unjoined party [must] negate this conclusion ....'"[89] Failure of the non-moving party to meet its burden, "will result in joinder of the party or dismissal of the action."[90]

1. *Can complete relief be granted without Cognita?*

Defendants argue that complete relief cannot be afforded because Cognita's conduct is center-stage in Bryan Park's claim and any judgment cannot be paid without Cognita's approval.[91] The problem with defendants' argument is that it does not address relief "*among those already parties*."[92] The focus must be on whether Bryan Park may obtain complete relief on its breach of contract claim against Masters.[93] The Masters Agreement concerns one party with a contractual right

[87] Super. Ct. Civ. R. 19(b); *Fedirko*, 2007 WL 1784184, at *3.
[88] *Fedirko*, 2007 WL 1784184, at *3.
[89] *Dillon Gage Inc. of Dallas v. Umicore Precious Metals USA Inc.*, 2025 WL 3779149, at *4 (Del. Super. Dec. 30, 2025) (quoting *Roberts*, 2007 WL 2319761, at *3).
[90] *Connorex-Lucinda, LLC v. REX RES Hldgs., LLC*, 2022 WL 17543209, at *5 (Del. Super. Nov. 29, 2022) (citation omitted).
[91] OB at 20.
[92] Super. Ct. Civ. R. 19(a).
[93] The same analysis applies with respect to the *quantum meruit* claim, a *quasi*-contract claim.

(Bryan Park) and one party with a contractual obligation (Masters). If Bryan Park proves its claim, Masters will be obligated to pay the awarded damages. No other party is needed to enter this relief.[94]

Defendants argue that without Cognita, Masters "will be put in the bizarre position of defending against [Bryan Park's] claims—each of which turns on the conduct of Cognita, an otherwise absent third party."[95] The issue to be litigated is whether Masters breached the contract. Without the tort claims in the case, that someone directed Masters to breach the contract is not relevant as it is not a defense to the claim. Even if third party discovery is needed from Cognita, that does not make it a necessary party.[96]

Cognita's argument that any judgment cannot be paid without its consent does not change this outcome. Under Cognita's theory, every controller or parent company (which has the ability to control the subsidiary's payments) must be sued along with the contract-party entity for the plaintiff to recover on a breach of

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[94] *See NAMA Hdgs., LLC v. Related World Market Ctr., LLC,* 922 A.2d 417, 436 (Del. Ch. 2007) ("The Specific Performance Action concerns one party with a contractual right (NAMA) and one party with a contractual obligation (Related). If NAMA can prove its claim, Related will be obligated to retain and segregate funds as required under section 12.18(g). No other parties are needed to accord this relief."); *Ferrari v. Helmsman Mgmt. Servs., LLC*, 2020 WL 3444106, at *3 (Del. Super. June 23, 2020) (quoting *Gotham Partners, L.P. v. Hailwood Realty Partners, L.P.*, 817 A.2d 160, 172 (Del. 2002)) ("'[o]nly a party to a contract may be sued for breach.'").

[95] OB at 21.

[96] *Sorenson Impact Found. v. Cont'l Stock Transfer & Tr. Co.*, 2022 WL 17039158, at *2 (Del. Ch. Nov. 17, 2022) ("third-party discovery is common and likely insufficiently prejudicial to invoke dismissal under [Rule 19].").

contract. Defendants cite no law supporting such a theory, which is unsurprising. Not only does it violate the separateness of artificial entities, the only necessary parties to a breach of contract action are the contract parties.[97]

Furthermore, Cognita's argument relates to collection of a judgment. If Bryan Park is successful on the breach of contract claim, the Court can enter a final judgment for the amount owed. Collection proceedings, if any, would follow after relief has been granted.

2. *Will Cognita's ability to protect itself be impaired?*

Because of its controlling interest in Masters, Cognita argues that "it is plainly interested in the action's subject matter" and if not joined, it will be unable to protect this interest.[98] But Cognita has no direct interest in the action as it is not a contract-party. Cognita's contention that it would be harmed because if Masters is ordered to pay the fee to Bryan Park, Cognita will ultimately need to …[pay] or approve[]" the payment[99] is not the type of interest Rule 19(a)(2) is designed to protect.[100]

[97] *Ferrari*, 2020 WL 3444106, at *3 (quoting *Gotham Partners, L.P.*, 817 A.2d at 172) ("'[o]nly a party to a contract may be sued for breach.'").
[98] OB at 20.
[99] RB at 18.
[100] *Surf's Up Legacy Partners, LLC v. Virgin Fest, LLC*, 2021 WL 6012782, at *3 (Del. Super. Dec. 16, 2021) (a general or collateral interest in the litigation is not a "legally enforceable interest").

Defendants fail to show that Cognita is a necessary party, therefore, the Court need not address whether Cognita is indispensable under the Rule 19(b) factors. The request for dismissal under Rule 12(b)(7) is DENIED.[101]

D. *Quantum Meruit*

Under Superior Court Civil Rule 12(b)(6), the court must "'deny the motion [to dismiss] unless the plaintiff could not recover under any reasonably conceivable set of circumstances.'"[102] When considering a motion under Rule 12(b)(6), the court "must accept all well-pleaded factual allegations in the [c]omplaint as true, accept even vague allegations … as 'well-pleaded' if they provide defendant notice of the claims, [and] draw all reasonable inferences in favor of the [non-breaching party.]"[103] "[U]nder Delaware's judicial system of notice pleading, a plaintiff need not plead evidence. Rather, the plaintiff need only allege facts that, if true, state a claim upon which relief can be granted."[104] The court, however, does not accept

[101] Defendants argue that Bryan Park waived any opposition to dismissal of its *quantum meruit* claim by not addressing this claim in its brief. But defendants failed to satisfy their burden to show that Cognita is "needed for just adjudication." So the burden never shifted to Bryan Park. *Fedirko*, 2007 WL 1784184, at *2 (the burden only shifts after a possibility of required joinder is shown). Further, as the Court noted, the breach of contract arguments apply equally to the *quantum meruit* claim. Accordingly, there has been no waiver.

[102] *Delaware Human & Civil Rights Comm'n v. Welch*, 2025 WL 2222967, at *4 (Del. Super. Aug. 5, 2025) (quoting *Cent. Mortg. Co. v. Morgan Stanley Mortg. Cap. Holdings LLC*, 27 A.2d 531, 537 (Del. 2011)).

[103] *Cent. Mortg. Co.*, 27 A.3d at 537.

[104] *VLIW Tech., LLC v. Hewlett-Packard Co.*, 840 A.2d 606, 611 (Del. 2003).

"conclusory allegations unsupported by specific facts," or "draw unreasonable inferences in the plaintiff's favor."[105]

Masters argues that Bryan Park's *quantum meruit* claim must be dismissed because an enforceable contract governs the parties' relationship.[106] Bryan Park responds that Masters has put the validity of the Masters Agreement at issue and therefore, the *quantum meruit* claim may be pled in the alternative.[107] Masters counters that it does not attack the validity of the *agreement*, but just the finder's fee provision, which may be severed from the contract if found to be unenforceable.[108]

Quantum meruit is a quasi-contract claim[109] and it may be dismissed when an express contract governs the parties' relationship.[110] If, however, "it is unclear at the pleading stage how a breach of contract may interact with a [*quantum meruit*] claim pleaded in the alternative, it is also appropriate to take a wait-and-see approach[.]"[111]

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[105] *Windsor I, LLC*, 238 A.3d at 871 (citation omitted).
[106] OB at 23.
[107] AB at 22-23.
[108] RB at 21-23. Masters argues that the finder's fee provision is unenforceable because it violates federal securities laws. *See* OB at 8 n.5. The Masters Agreement contains a severability clause, under which any invalid or unenforceable clause will not impair the enforceability of the remainder of the agreement. Masters Agreement § 9.
[109] *Mandell v. Kona*, 2025 WL 1147567, at *10 (Del. Super. Mar. 18, 2025).
[110] *James v. United Medical LLC*, 2017 WL 1224513, at *7 (Del. Super. Mar. 31, 2017) (citing *Alltrista Plastics, LLC v. Rockline Indus., Inc.*, 2013 WL 5210255, at *11 (Del. Super. Sept. 4, 2013)).
[111] *Mandell*, 2025 WL 1147567, at *9 (citing *Garfield on behalf of ODP Corp. v. Allen,* 277 A.3d 296, 361–62 (Del. Ch. 2022)); *State ex rel. Structa-bond, Inc. v. Mumford & Miller Concrete, Inc.*, 2002 WL 31101938, at *5 (Del. Super. Sept. 17, 2002), *aff'd sub nom. Mumford & Miller Concrete, Inc. v. Structa-Bond, Inc.*, 827 A.2d 30 (Del. 2003); *see James*, 2017 WL 1224513, at *7 (finding that a quasi-contract claim may be pleaded in the alternative and survive a motion to dismiss when defendants dispute the enforceability of the contract).

Masters has put the validity of the Masters Agreement at issue. At this stage, the Court is not being asked to decide (nor could it) whether the fee provision is invalid and if so, it can be severed. Thus, it is unclear whether a valid contract governs the parties' relationship. Accordingly, Bryan Park's *quantum meruit* claim may be pled in the alternative and will not be dismissed.[112]

V. CONCLUSION

Because defendants fail to establish the forum selection clause is binding on Bryan Park, the motion to dismiss for improper forum is **DENIED**. Cognita is not subject to personal jurisdiction in Delaware because the long-arm statute is not satisfied and accordingly, Cognita's motion to dismiss is **GRANTED**. Cognita is not a necessary party and therefore, the motion to dismiss under Rule 19 is **DENIED**. Finally, Bryan Park may plead its *quantum meruit* claim in the alternative and therefore, Masters' motion to dismiss under Rule 12(b)(6) is **DENIED**.

IT IS SO ORDERED.

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

[112] *See James*, 2017 WL 1224513, at *7; *see also Mandell*, 2025 WL 1147567, at *9.