



IN THE SUPREME COURT OF THE STATE OF DELAWARE

LONG DENG,

Plaintiff Below/Appellant,

v.

HK XU DING CO., LIMITED,

Defendant Below/Appellee.

No. 200, 2023

(Appeal from Superior Court
of the State of Delaware,
C.A. No. N21J-04630-AML)

ANSWERING BRIEF OF APPELLEE HK XU DING CO., LIMITED

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NATURE OF PROCEEDINGS

Appellant Long Deng appeals the Superior Court's ruling that 8 *Del. C.* § 324 requires physical seizure of a stock certificate before certificated shares of a Delaware corporation may be attached and auctioned to satisfy a foreign money judgment.

Deng has a New York judgment against appellee HK Xu Ding Co. Ltd. ("HK"), which holds certificated shares of iFresh, Inc., a Delaware corporation. But HK's iFresh stock certificate is in Chinese police custody. On June 3, 2022, Deng filed a motion to auction HK's iFresh stock under Section 324, asking the Superior Court to order the Kent County Sheriff to auction HK's iFresh stock to satisfy the New York Judgment despite HK's lack of possession of the stock certificate.

After a Superior Court Commissioner granted Deng's request to force an auction of HK's iFresh stock, the Superior Court reversed the Commissioner's ruling and issued an opinion holding that Section 324 requires physical seizure of a stock certificate before certificated shares may be attached and auctioned (the "Opinion"). Because physical seizure has not been accomplished, the Superior Court concluded that Deng's motion to sell the shares should have been denied and vacated the Commissioner's order. This Court should affirm the Opinion.

SUMMARY OF ARGUMENT

1. Denied. The reference in 6 *Del. C.* § 8-112 to 8 *Del. C.* § 169 does not negate the plain-language physical seizure requirement in Section 324 or establish Delaware as the fictional location for all certificated shares of stock of Delaware corporations.

2. Admitted.

3. Admitted.

4. Admitted.

5. Denied. The Superior Court never concluded that Section 169 sites all shares of Delaware corporations in Delaware regardless of the location of the stock certificate and correctly held that the plain language of Section 324 and Section 8-112 requires physical seizure of certificated shares before those shares may be attached and sold.

6. Denied. Section 8-112 has always contained a physical seizure requirement and the 1998 amendment to Section 324 incorporating a reference to Section 8-112 extended the physical seizure requirement to Section 324.

7. Denied. Section 169 is a jurisdictional statute and does not establish Delaware as the fictional location of all stock certificates evidencing ownership of stock in Delaware corporations.

8. Denied. The Superior Court only turned to the legislative synopsis and intent to the extent there was an ambiguity in the relevant statutes and correctly concluded that the legislative synopsis and history supported its plain language interpretation that physical seizure is required to attach and sell certificated shares.

9. Denied. The Synopsis to the 1998 amendment to Section 324 specifically confirms that physical seizure is required, and there is no legislative history to suggest that the Delaware General Assembly did not intend to require physical seizure when it amended Section 324.

10. Denied. The express language of Section 324 and Section 8-112 requires physical seizure of certificated shares for attachment and the reference to Section 169 in Section 8-112 does not change that analysis. Moreover, no Delaware court has interpreted Section 324 since it was amended in 1998.

11. Denied. Although the plain language of the statutes controls, to the extent the policy rationale is relevant, it also supports a physical seizure requirement because it protects innocent purchasers where a judgment debtor has already transferred the certificate in the sale of a pledged transaction when an attachment has occurred by requiring physical seizure before an attachment and sale.

12. The plain language of Section 324 requires compliance with Section 8-112, which requires actual possession of certificated securities of shares in Delaware corporations.

13. Section 169 is a jurisdictional statute that does not establish Delaware as the fictional location of all certificated shares in Delaware corporations and does not create an exception to the physical seizure requirement under Section 8-112.

14. The legislative history and policy considerations of the applicable statutes is consistent with their plain language.

15. No court in Delaware has interpreted the interplay between Section 324 and 8-112 since Section 324 was amended in 1998. Therefore, this case is a matter of first impression in Delaware.

COUNTERSTATEMENT OF FACTS

On January 23, 2019, Deng sold 8,294,989 shares of iFresh common stock to HK for approximately \$7 million. B0011-B0047. All 8,294,989 shares are certificated in a stock certificate in HK's name (the "Stock Certificate"). B0124. After HK did not pay the full purchase price, Deng filed suit in New York and obtained a default judgment against HK on February 19, 2021, in the amount of \$2,424,469.68 plus interest. B0093.

On June 11, 2021, Deng domesticated the New York judgment in Delaware under 10 *Del. C.* § 4782. A0001. The Stock Certificate is in the custody of the Chinese police. B0124. It is undisputed that there is no stock certificate to be presented or seized for purposes of attaching or auctioning HK's iFresh shares. OB at 6.

Deng filed a Writ of Attachment Fieri Facias and a praecipe directing the Kent County Sheriff to attach HK's iFresh shares. A0003. The Superior Court Prothonotary issued the Writ on April 27, 2022. *Id.* The Kent County Sheriff returned service on May 4, 2022. *Id.*

On June 3, 2022, Deng filed a motion in the Superior Court for an order directing the Kent County Sheriff to auction HK's iFresh stock in satisfaction of the New York judgment (the "Motion to Sell"). B0001-B0007. Before filing the Motion to Sell, Deng sought and obtained confirmation from iFresh that

HK remained on iFresh's books as the stock's registered owner. B0049-B0077. In the Motion to Sell, Deng argued that Delaware law did not require physical seizure of the stock certificate before the shares could be publicly auctioned. B0003-B0005.

After a hearing on August 15, 2022, the Superior Court Commissioner issued a bench ruling granting Deng's Motion to Sell. No court reporter was present for the hearing and the recording was inaudible preventing the bench ruling from being memorialized in a transcript. Op. at 3 n.8.¹ The Commissioner entered an order (1) requiring iFresh to issue a "certificate of the number of shares held by [HK]" to Deng within 20 days and (2) directing the Kent County Sheriff, upon receipt of the iFresh certification, to sell the iFresh shares within 60 days. B0253-B0255.

On October 4, 2022, HK moved for reconsideration of the Commissioner's order and to stay execution of the Commissioner's order. B0262-B0267. The Superior Court heard argument on December 5, 2022. A0011. The Superior Court granted HK's motion to stay and took the motion for reconsideration under advisement. *Id.* The Superior Court granted the motion for reconsideration and vacated the Commissioner's order on September 20, 2022. *Id.* The Superior Court held that Section 324 requires

¹ "Op." refers to the Superior Court's Opinion dated May 8, 2023.

physical seizure of a stock certificate before certificated shares of a Delaware corporation may be auctioned. Op. at 1. The Superior Court ruled that, because seizure of HK's iFresh stock certificate had not been accomplished, the Motion to Sell should have been denied, and the Commissioner's order granting that motion must be vacated. *Id.*

ARGUMENT

I. The Plain Language of Section 324 Requires Physical Seizure of a Stock Certificate Before the Stock Evidenced by the Certificate May Be Auctioned

A. Question Presented

Whether the trial court correctly interpreted Section 324 to require physical seizure of a stock certificate before certificated shares of stock of a Delaware corporation may be attached and auctioned. Preserved at Op. at 4.

B. Scope of Review

Questions of statutory interpretation are legal questions that this Court reviews de novo. *Richardson v. Bd. of Cosmetology and Barbering State*, 69 A.3d 353, 356 (Del. 2013).

C. Merits of the Argument

Under Section 324, a creditor may not reach a certificated security without “actual seizure of the security certificate by the officer making the attachment or levy.” Section 324(a) states, in relevant part:

The shares of any person in any corporation with all the rights thereto belonging, or any person’s option to acquire the shares, or such person’s right or interest in the shares, may be attached under this section for debt, or other demands So many of the shares ... may be sold at public sale to the highest bidder, as shall be sufficient to satisfy the debt, or other demand, interest and costs, upon an order issued therefor by the court from which the attachment process issued **Except as to an**

uncertificated security as defined in § 8-102 of Title 6, the attachment is not laid and no order of sale shall issue unless § 8-112 of Title 6 has been satisfied. If the shares of stock ... be so sold, any assignment, or transfer thereof, by the debtor, after attachment, shall be void.

8 *Del. C.* § 324 (emphasis added).

In turn, Section 8-112 provides that unless certain exceptions apply, actual seizure is required for a creditor to reach a certificated security:

Except to the extent otherwise provided or permitted by §§ 169 and 324 of Title 8, §§ 365, 366 and Chapter 35 of Title 10, and subsection (d) hereof, the interest of a debtor in a certificated security **may be reached by a creditor only by actual seizure of the security certificate by the officer making the attachment or levy.** However, a certificated security for which the certificate has been surrendered to the issuer may be reached by a creditor by legal process upon the issuer.

6 *Del. C.* § 8-112 (emphasis added). When read together, these statutes require a creditor seeking to attach certificated shares of a Delaware corporation in satisfaction of a debt (Section 324) to physically seize the certificates evidencing the shares (Section 8-112).

Prior versions of Section 324 did not contain this express reference to Section 8-112. Before 1998, Delaware law did not require physical seizure of a stock certificate before shares could be sold by a creditor. But in 1998, the General Assembly amended Section 324 and inserted the language “[e]xcept

as to an uncertificated security as defined in § 8-102 of Title 6, the attachment is not laid and no order of sale shall issue unless § 8-112 of Title 6 has been satisfied.” Op. at 6. Since 1998, Delaware law has mandated that certificated shares of stock of a Delaware corporation cannot be attached and sold by a creditor absent physical seizure.

Contrary to Deng’s argument, the Superior Court did not recognize that Section 8-112 allows attachment of stock without physical seizure. OB at 12-13. Deng confuses and misstates the Superior Court’s conclusions. The Superior Court noted that “before the 1998 amendments to Section 324, Section 8-112’s combined reference to Sections 169 and 324 gave Delaware courts the jurisdictional basis and power to order the sale of certificated shares without physically seizing the certificate.” Op. at 10. In other words, Section 8-112 always required physical seizure of a stock certificate, but, before 1998, Section 324 did not require compliance with Section 8-112 before a creditor could attach shares of a Delaware corporation to satisfy a debt.

The Superior Court concluded that, after the 1998 amendment to Section 324, “Delaware courts retained the jurisdiction under Section 169 to attach and sell shares, but no longer had the power to do so without requiring physical seizure of the share certificate.” *Id.* The fact that Section 324(a) references Section 8-112 does not change the plain meaning of the statutes.

As the Superior Court described, “[t]o conclude otherwise would be to mire oneself in a circularity of reasoning from which there is no exit.” Op. at 8.

The Superior Court correctly concluded that the plain language of Section 324 and Section 8-112 unambiguously provide that the relief Deng seeks can be granted only if there is actual seizure of the Stock Certificate. This Court should affirm the Opinion on this basis alone.

II. Section 169 Does Not Establish Delaware as the Fictional Location of All Stock Certificates Evidencing Ownership of Stock in Delaware Corporations

A. Question Presented

Whether the trial court correctly concluded that Section 169 is a jurisdictional statute and does not create an exception to the physical seizure requirement for certificated shares under Section 8-112. Preserved at Op. at 9-10.

B. Scope of Review

Questions of statutory interpretation are legal questions that this Court reviews de novo. *Richardson*, 69 A.3d at 356.

C. Merits of Argument

The reference to Section 169 in Section 8-112 does not negate the clear requirement for physical seizure in Section 8-112.

Section 169 provides:

For all purposes of title, action, attachment, garnishment and jurisdiction The situs of the ownership of the capital stock of all corporation existing under the laws of this State, whether organized under this chapter or otherwise, shall be regarded as in this State.

8 *Del. C.* § 169.

Deng attempts to avoid the plain language of Sections 324 and 8-112 by arguing that the reference to Section 169 in Section 8-112 means there is

no requirement for physical seizure of a stock certificate. OB at 11. He is incorrect. While Section 169 states that the situs of ownership of capital stock is in Delaware, it makes no reference to possession or location of stock certificates. Indeed, Section 169 refers to “capital stock,” while Section 8-112 refers to “certified securities.” *Compare 8 Del. C. § 169 with 6 Del. C. § 8-112.* Deng cites no authority interpreting Section 169 to make Delaware the fictional location of all paper stock certificates of Delaware corporations.

Moreover, the 1998 amendment to Section 324 mandated Section 8-112’s physical-seizure requirement, notwithstanding the prior existence of Section 169, which had long been in effect. If the reference to Section 169 in Section 8-112 eliminated the physical seizure requirement, there would be no circumstance in which physical seizure is required. Section 169 does not undo the clear language of Section 8-112, which requires physical seizure of certificated securities for purposes of attachment.

Deng’s argument that Section 8-112’s reference to Section 169 eliminates the physical-seizure requirement is without merit. OB at 12-14. The Superior Court correctly described this argument as “strained” and “so convoluted it is difficult to summarize, let alone address.” Op. at 10-11. First, the plain language of Section 324 makes no distinction between Delaware corporations and non-Delaware corporations. Second, there is no language in

any of the applicable statutes differentiating between Delaware and non-Delaware corporations. Moreover, other sections of the DGCL expressly distinguish between Delaware and foreign corporations, demonstrating that no such distinguishment was intended for Sections 169 and 324.

Because Section 169 does not establish a fictional location for all paper certificates evidencing Delaware stock, there is no ambiguity or conflict between Section 169 and Sections 324 and 8-112. Even if there was a conflict (and there is not), a “specific statute controls the more general to the extent of any conflict,” and Sections 324 and 8-112 would control. *Blue Cross and Blue Shield of Del., Inc. v. Elliott*, 449 A.2d 267, 270 (Del. 1982) (superseded by statute on other grounds). In addition, Section 169 was codified in 1953, well before Section 324 was amended to include the physical-seizure requirement of Section 8-112. The legislative intent in the more specific and later-enacted statute controls. *See Mills v. State*, 201 A.3d 1163, 1176 n.66 (Del. 2019).

Deng also argues that the Court’s “textual” reading erroneously read Section 8-112’s reference to section 169 out of existence and the Court’s “legal reasoning” overlooked Section 169. OB at 14, 17. In support, Deng argues that “Sections 324 and 8-112 do not just ‘reference each other,’” and that the Court did not read all three sections in harmony. OB at 15. To the contrary, the Superior Court addressed Section 169. *See, e.g., Op.* at 9

(“Similarly, Section 8-112’s reference to Section 169 does not create an exception to the seizure requirement for certificates shares.”). The Court correctly concluded that Section 169 is a jurisdictional statute that gives Delaware courts jurisdiction over disputes regarding “incidents of stock ownership” and gives juridical basis for attachment of sequestrations of stock of Delaware corporations. Deng’s statement that Section 169 begins with “[f]or all purposes of title, action, attachment, garnishment and jurisdiction” does not “unambiguously” show that Section 169 serves as more than jurisdictional statute. OB at 18. As the Superior Court explained, “[n]othing in Section 169 ... addresses the requirements of attaching or selling certificated stock,” and the reference to Section 169 in Section 8-112 does not change the plain-language requirement for physical seizure. Op. at 9.

Deng also argues that the Court’s conclusion that Section 169’s reference to the situs of capital stock does not create a legal fiction that a share certificate is physically located in Delaware is irreconcilable with well-settled law. OB at 19. Deng points to *Heitner v. Greyhound Corp.*, 1975 WL 417, at *3 (Del. Ch. May 12, 1975), to argue that the court there rejected an “identical” argument that the Section 169 situs rule “is a pure fiction” that cannot operate to allow seizure. OB at 19. *Heitner* was decided well before the 1998 amendment to Section 324, and the court there specifically noted the

prior statute “intentionally omitted the recommended language of the act which would have mandated the conclusion [that the stock could not be validly seized by the sequestration order since it is not property in Delaware]. *Id.* at *3. *Heitner* provides no support for Deng’s argument.

The Court’s ruling correctly interpreted Sections 324, 8-112, and 169, which, read together, conclude that physical seizure is required.

III. The Superior Court’s Interpretation of the Plain Language of the Applicable Statutes is Consistent with the Legislative History and Policy Considerations

A. Question Presented

Whether the Superior Court correctly concluded that the legislative history, including the legislative synopsis, supported its interpretation of Sections 169, 324 and 8-112. Op. at 6-7.

B. Scope of Review

Questions of statutory interpretation are legal questions that this Court reviews de novo. *Richardson*, 69 A.3d at 356.

C. Merits of Argument

Deng argues that the statutes are unambiguous and the Superior Court “mistakenly injected the Synopsis and legislative history” into the analysis. OB at 21. However, the Superior Court looked to the legislative history only “to the extent the cross-reference between Sections 324 and 8-112 creates ambiguity.” Op. at 8. As described above, the plain language of Sections 324, 8-112, and 169 demonstrates that physical seizure of the stock certificate is required. Should this Court find ambiguity, the legislative synopsis, history, and policy further support the conclusion that physical seizure is required.

1. The 1998 Synopsis Supports the Conclusion that Physical Seizure is Required

The synopsis that accompanied the Section 324 amendment in 1998 confirms that the General Assembly intended to require physical seizure. *See* A0063. When Section 324 was amended in 1998, the General Assembly added the language “[e]xcept as to an uncertificated security as defined in § 8-102 of Title 6, the attachment is not laid and no order of sale shall issue unless § 8-112 of Title 6 has been satisfied. *Op.* at 6-7. The synopsis stated:

The amendments to Section 324 establish that the execution process it provides is available only for securities of a debtor identified on the books of the corporation and, **as to certificated securities, only upon satisfaction of the requirements of Section 8-112 of Title 6, including presentation of the stock certificates.** The amendment is intended to enhance the utility of stock of a Delaware corporation as collateral.

8 *Del. C.* § 324(a), Synopsis of Section 324 (emphasis added); *Op.* at 7.

Deng attempts to bypass the legislative intent reflected in the synopsis by arguing that Section 201 was not amended in 1998 and that Professor Reitz’s article supports that conclusion. *OB* at 24. Both arguments miss the mark. First, contrary to Deng’s assertion, the Superior Court did not overlook Section 201. *OB* at 23-24. The Superior Court cited to Section 201, which states that “[t]o the extent that any provision of this chapter is inconsistent with any provision of subtitle I of Title 6, this chapter shall be controlling,” as

support for its statement that the 1998 amendment to Section 324 made clear that Section 8-112 was subordinate to Section 324. Op. at 8.

Second, Professor Reitz's article does not reinforce Deng's conclusions as he suggests. Professor Reitz's article, published before the 1998 amendments to Section 324, argues that there were problems created by the addition of the "except as otherwise provided" language in Section 8-112, and Professor Reitz urged the General Assembly to adopt the seizure requirement in Section 8-112. A0047; Op. at 8. Deng's argument that Professor Reitz's article stated that Section 8-112 "cannot require physical seizure" is without merit. OB at 26. Indeed, the addition of the reference to Section 8-112 to Section 324 accomplished Professor Reitz's objective. *See* A0061.

The Superior Court correctly concluded that the 1998 synopsis further supports that the General Assembly intended to require physical seizure.

2. The Statutory History Supports Physical Seizure

The most important piece of available legislative history, the synopsis, supports that physical seizure was required after the 1998 amendment. However, Deng argues that the "actual" legislative history of Section 8-112 supports the conclusion that physical seizure is not required. OB at 26. Deng points to nothing in the legislative history that supports the conclusion that Section 8-112, or Section 324 as amended, was intended to allow the

attachment of shares without physical seizure. Deng merely points out that Section 8-112 and its predecessor statute have been previously amended and then inexplicably draws the conclusion “[g]iven the consistent exceptions in Section 8-112 and its predecessors mandating the primacy of Section 169’s situs rule-which exceptions have carried through since July 1, 1967-Delaware courts have consistently held that physical seizure of stock certificate for attachment are not required.” OB at 29.

The cases that Deng cites in support, *Baker v. Gotz*, 387 F. Supp. 1381 (D. Del. 1975), and *Castro v. ITT Corp.*, 598 A.2d 674 (Del. Ch. 1991), are easily distinguished. In *Baker*, decided pre-1998, the court stated that Section 8-317 (as the predecessor for Section 8-112) “only had the effect and no other, of perpetuating the procedures for attaching shares of stock ... without a seizure of the certificate.” 387 F.Supp, at 1393. This holding has no effect on the amended Section 324(a) or Section 8-112. In *Castro*, the court held that the pre-1998 version of Section 324 did not require physical seizure of a stock certificate for attachment. 598 A.2d at 682. That holding is not applicable to the post-1998 version of Section 324. Deng argues that the court’s interpretation of Section 8-317’s (the predecessor for Section 8-112) reference to Section 169 supports its conclusion, but the court did not conclude that the cross references meant that physical seizure was not required. *Id.* And it could

not because the version of Section 324 that existed in 1991 did not require physical seizure. *Id. Castro* offers no support for Deng’s position.

3. Policy Supports a Physical Seizure Requirement

Deng argues that the Superior Court erred in its policy-based reasoning, even though “this is not explicit in the Opinion itself.” OB at 33.

As Deng points out, the plain language of the statutes, which unambiguously requires physical seizure, controls. OB at 34 (citing *State v. Cooper*, 5875 A.2d 1074, 1078 (Del. 1990); *Colonial Sch. Bd. v. Colonial Affiliate, NCCEA/DSEA/NEA*, 449 A.2d 243, 248 (Del. 1982)). To the extent policy rationale matters, policy supports physical seizure. Deng argues that reading the statutes to require physical seizure decreases the utility of stock of a Delaware corporation as collateral because a debtor could “simply hand the shares over to another party and foreclose all recourse to [the creditor].” OB at 35. But there is no support for Deng’s policy concern. Indeed, the synopsis to the 1998 amendment of Section 324 specifically stated that “[t]he amendment is intended to enhance the utility of stock of a Delaware corporation as collateral.” 8 *Del. C.* § 324(a), Synopsis of Section 324 (emphasis added). No lender would accept certificated shares of stock in a Delaware corporation as security for a loan if those same shares could be reached by a separate judgment creditor. Deng further argues that Section

324(a) addresses pre-attachment purchases by explicitly depriving those who purchased certificates shares after they were constructively attached without knowledge of the attachment. OB at 35. Deng again ignores the plain language of the statute, which does not explicitly address a pre-attachment purchaser, but instead requires physical seizure as the only means to effectuate an attachment of certificated shares. The only logical policy conclusion is that purchasers were meant to be protected through the physical seizure requirement. *See* A0083.

IV. This Case Involves an Issue of First Impression Under Delaware Law

A. Question Presented

Whether the Superior Court correctly concluded that no other Delaware Court has examined whether Section 324, as amended in 1998, requires physical seizure of certificated stock for attachment. Op. at 5.

B. Scope of Review

Questions of statutory interpretation are legal questions that this Court reviews de novo. *Richardson*, 69 A.3d at 356.

C. Merits of Argument

Deng argues that despite the Superior Court’s conclusion that no Delaware court has directly addressed this issue of statutory interpretation, *Crystallex Int’l Corp. v. Bolivarian Republic of Venez*, “squarely rejected [the argument] that Section 8-112 precluded attachment and sale absent physical seizure.” OB at 37. Deng misapprehends *Crystallex*. In *Crystallex*, the district court addressed a motion to quash a writ of attachment issued for the shares of a company to satisfy a judgment against a foreign country. 2021 WL 129803, at *9 (D. Del. Jan. 14, 2021). The company argued that a writ of attachment, which required the company to attach and sell the shares, was not valid because the company did not possess the physical certificates. *Id.* at *8. The court ruled that the company was judicially estopped from arguing that

physical seizure was required because the company has previously represented that the writ of attachment was sufficient security to protect the judgment creditor's interests. *Id.* at *11. The court also held that the physical seizure argument was untimely and should have been raised years earlier. *Id.* at *13-14. However, the court never addressed the issue of statutory interpretation, and the court's ruling that a particular litigant was barred from arguing physical seizure because of judicial estoppel and untimeliness does not support Deng's argument. *See Op* at 11-12. Deng further argues that the Superior Court ignored the fact that judicial estoppel cannot override a statutory requirement. *OB* at 37 (citing *United States v. Scott*, 180 F. Supp. 32 88, 93 (D. Mass. 2015); *F.A.S.A. Const. Corp. v. Vill. Of Monroe*, 789 N.Y.S.2d 175, 177 (N.Y. App. Div. 2005); *Worley v. Harris*, 666 F.2d 417, 422 (9th Cir.)). However, the *Crystallex* court made no ruling on the interpretation of the statutes when it ordered the writ of attachment because the company represented that the writ of attachment was sufficient security to protect the judgment creditor's interests. Accordingly, the court's ruling has no bearing on the interpretation of the statutes.

Deng also briefly cites *Alberta Securities Commission v. Rychman*, 2015 WL 2265473, at *10 (Del. Super. Ct. May 5, 2015) and *Nastro v. D'Onofrio*, 263 F.Supp.2d 446, 453 n.4 (D. Conn. 2003). Neither case

supports Deng's interpretation of the applicable statutes. In *Alberta*, the court addressed whether Delaware was "sufficiently interested in the litigation" to enforce a subpoena and found that it was because any shares owned by the third party were owned in Delaware. 2015 WL 2265473, at *10. The court's ruling had no relevance to the statutory interpretation at issue here. The *Nastro* court also did not rule on any statute regarding the physical seizure requirement, only noting that Delaware law holds that the situs of a share of a corporation under Delaware law is in Delaware. 263 F.Supp.2d 446, 453 n.4.

No Delaware court has addressed the interplay between Sections 169, 324, and 8-112 since Section 324 was amended in 1998. Accordingly, this is a matter of first impression under Delaware law.

CONCLUSION

For the foregoing reasons, the Opinion of the lower court vacating the September 20 Order granting should be affirmed.

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CERTIFICATE OF SERVICE

I hereby certify that on August 24, 2023, I caused a true and correct copy of Appellee's Answering Brief and Appendix to be served on the following counsel of record via File & Serve*Xpress*:

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