IN THE COURT OF CHANCERY OF THE STATE OF DELAWARE
IN AND FOR NEW CASTLE COUNTY

THE CAPITAL GROUP COMPANIES, INC., a Delaware corporation,	)	
Plaintiff,	)	
v.	)	C.A. No. 422-N
TIMOTHY D. ARMOUR and NINA L. RITTER, individually and as Trustees of the Ritter-Armour Trust, dated August 6, 1991, as amended,	)	
Defendants.	)	

MEMORANDUM OPINION AND ORDER

Submitted: October 4, 2004
Decided: October 29, 2004
Revised: November 3, 2004

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LAMB, Vice Chancellor.

I.

A Delaware corporation brought this suit against the two trustees of a trust, who are husband and wife, seeking a declaration as to the validity and enforceability of certain contractual stock transfer restrictions alleged to apply to shares of its Class A common stock owned by the trust.[1] The two defendants are parties to a divorce proceeding pending in the Superior Court of California and, in connection with that proceeding, the wife has claimed an interest in the stock now owned by the trust. The corporation seeks to litigate that claim by its complaint in this court.

The contract containing the transfer restrictions at issue stipulates to Delaware as the forum for the resolution of all disputes based on or relating to the contract and expresses the parties' consent to the jurisdiction of this court for the purpose of such suits. The wife has moved to dismiss the complaint, claiming a lack of personal jurisdiction over her. The court concludes that the objecting trustee is bound by the consent to jurisdiction clause in the contract and must defend the action in Delaware. The court also concludes that it may properly exercise jurisdiction with respect to closely related claims asserted against her in her individual capacity.

[1] All references to "stock" refer to CGC's Class A common stock, unless otherwise noted.

II.

The Capital Group Companies, Inc. ("CGC") is a privately-held Delaware corporation with its principal place of business in Los Angeles, California. The defendants are Timothy Armour and Nina Ritter, husband and wife, who are the trustees of the Ritter-Armour Revocable Trust dated August 6, 1991, as amended (the "Trust"). Armour is an Executive Vice President of Capital Research and Management Company, a subsidiary of CGC, and a director of CGC. Ritter is a resident of California and has no substantial contacts with Delaware, beyond the stock at issue in this suit.

CGC requires all persons purchasing shares of its common stock to become parties to a Stock Restriction Agreement ("SRA") that contains several provisions relevant to this case, including a general restriction on transfer,[2] and a right to redeem[3] that allows the stock to be repurchased at a formula price[4] upon its transfer to a non-authorized transferee.[5] In general, the SRA precludes the transfer of stock to any non-employee of CGC (such as Ritter) and allows CGC the right to

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[2] Section 2.1 of the SRA provides, in pertinent part:

> No Stockholder shall sell, assign, transfer (whether by merger, operation of law or otherwise), dispose of or encumber any of the Stockholder's Shares or any interest therein except as specifically provided in this Agreement. Any purported or attempted sale, assignment, transfer, disposition or encumbrance of Shares or any interest therein not in strict compliance with this Agreement shall be void and have no force or effect.

[3] SRA § 4.8.1.

[4] SRA § 6. The Formula Price would allow the stock held in the Trust to be repurchased at a substantial discount from its estimated value of over $30 million.

[5] SRA § 4.2.

repurchase shares if they are transferred to a non-employee. The SRA also contains a governing law and jurisdiction provision, essentially a forum selection/consent to jurisdiction clause, stating that all actions relating to the SRA shall be brought in the state courts of Delaware or the district court of Delaware, and that CGC and each stockholder irrevocably submit to the jurisdiction of those courts for those purposes.[6]

In 1984, Armour and Ritter were married and, in 1989, began buying CGC common stock. All stock purchased between 1989 through mid-1998 was purchased in Armour's name. In October 1998, for tax planning purposes, and with CGC's consent, the defendants placed the stock owned by Armour into the Trust. In order to comply with the SRA, and to gain CGC's consent to the transfer, the defendants amended the Trust (the "Trust Amendment"), several provisions of which are relevant to the disposition of this case. The Trust Amendment provides that the Trust may not distribute any stock held in the trust without the consent of CGC.[7] The Trust Amendment also makes reference to the SRA and provides that,

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[6] Section 10.8 of the SRA provides, in pertinent part:

> . . . . CGC and each Stockholder agree that any action or proceeding based upon or relating to this Agreement shall be brought and maintained exclusively in the courts of the State of Delaware or in the United States District Court of Delaware. CGC and each of the Stockholders hereby irrevocably submit to the jurisdiction of the Courts of Delaware . . . for the purposes of any such action or proceeding . . . .

[7] Trust Amendment Art. IV, § E states, in pertinent part:

> Notwithstanding any trust provision that requires or permits a distribution of trust assets to me made by the Trustee to any trust beneficiary, the Trustee shall not distribute any [stock] to any trust beneficiary without the prior written consent of

upon revocation of the Trust, if the stock is not immediately transferred to Armour, then CGC has the right to repurchase.[8]

In connection with transferring the stock to the Trust, in their capacities as trustees, Armour and Ritter signed a so-called Joinder Agreement,[9] agreeing to be bound by the SRA. Thereafter, through 2002, again with the consent of CGC, the parties continued to purchase stock in the name of the Trust. In connection with

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> CGC, which consent may be granted or withheld in CGC's sole and absolute discretion. If CGC gives prior written consent to a transfer, each such Permitted Transferee shall execute and deliver to CGC a Joinder Agreement as a condition of any transfer. Any Transfer of [stock] other than to a Permitted Transferee who has executed and delivered to CGC the required Joinder Agreement shall be a "Non-Authorized Transferee" (as that term is defined in the [SRA]).

[8] Trust Amendment Art. IV, § F states, in pertinent part:

> Upon revocation or termination of the trust, or in the event the trust is amended in a manner inconsistent with the [SRA] as determined by CGC, the Trustee shall promptly either transfer all [stock] to [Armour], if he is living and if such transfer is authorized by the terms of the trust. If such transfer is not so authorized or if [Armour] is not then living, the Trustee shall offer to sell, pursuant to the requirements and procedures set forth in the [SRA], all [stock] held by the Trustee. If [stock is] to be transferred by the Trustee to [Armour], he shall execute and deliver to CGC a Joinder Agreement as a condition of any transfer. The Trustee shall not distribute or otherwise transfer [stock] to any "Person" (as that term is defined in the [SRA]) (including a trust beneficiary) without the prior written consent of CGC, which consent may be granted or withheld in CGC's sole and absolute discretion.

[9] The Joinder Agreement states, in pertinent part:

> We hereby agree and state that by signing this Joinder Agreement, the trust and each of us individually, in our capacity as trustees of the trust, are parties to, accept all of the obligations of, and are bound by all of the terms of the [SRA] and all of the provisions with respect to A Shares set forth in the trust * * * We understand that all stock certificates that we are acquiring as trustees have a restrictive legend and may not be sold, assigned, pledged or otherwise transferred except in accordance with the provisions of the [SRA] and state and federal securities laws.

those purchases, the defendants signed so-called Purchaser Representation Letters,[10] again agreeing to be bound by the SRA.[11] The Trust, as amended, provides that either Ritter or Armour may act on behalf of the Trust, but that only Armour can vote the stock held by the Trust.[12]

In June 2003, Armour filed for divorce in California. The stock held in the Trust represents the bulk of the value of the community property from the marriage. In connection with the divorce action, Ritter has asked for an award of a direct or indirect interest in the stock held in the Trust[13] and sought, unsuccessfully, to join CGC as a party to the divorce proceeding.[14]

On May 5, 2004, CGC filed this action, against the defendants in their capacities as trustee, seeking the following judgment:

a. declaring that the SRA is valid and enforceable;

b. declaring that the award of a record, beneficial or other interest to Ms. Ritter in connection with the California Divorce Action

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[10] The Purchaser Representation Letter states, in pertinent part:

> The Purchaser has read and understood all of the terms of the [SRA] and agrees to accept all of the obligations of, and to be bound by all of the terms of such Agreement with respect to all Stock of the Company presently being purchased or now owned by the Purchaser[.]

[11] There is considerable dispute as to whether Ritter signed the Joinder Agreement and the Purchaser Representation Letters in her individual capacity, or only as a trustee. This issue is discussed more fully, *infra*.

[12] Trust Amendment Art. IV, § H.

[13] "Ritter believes that continued ownership of the stock is so valuable and beneficial that to receive anything less than an in-kind division would result in an unequal division of the community estate." Br. in Support of Mot. and Decl. for Joinder, dated May 27, 2004, filed by Nina L. Ritter in *Armour v. Ritter*, Case No. 390510 (Super. Ct., Los Angeles County, CA June 24, 2004) at 10.

[14] *Id.* at 4.

> would constitute an unauthorized transfer, such that CGC would be entitled to repurchase or redeem any CGC stock transferred to Ms. Ritter (directly, beneficially or otherwise) in accordance with the SRA and CGC's Certificate of Incorporation.[15]

After Ritter moved to dismiss the original complaint, the court granted CGC's motion for leave to file an amended complaint. In the amended complaint, CGC sought the same declaratory relief against the defendants in their capacity as trustees and added claims against Ritter individually. On September 9, 2004, pursuant to Court of Chancery Rule 12(b)(2), Ritter renewed her motion to dismiss for lack of personal jurisdiction.

III.

When a defendant moves to dismiss for lack of personal jurisdiction, the plaintiff bears the burden of showing a basis for the court's exercise of jurisdiction over the nonresident defendant.[16] In determining whether it has personal jurisdiction over a nonresident defendant, the court will generally engage in a two-step analysis. First, was service of process on the nonresident authorized by statute? Second, does the exercise of jurisdiction, in the context presented, comport with due process?[17] However, a party may expressly consent to

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[15] Compl. p. 9.
[16] *See Plummer & Co. Realtors v. Crisafi*, 533 A.2d 1242, 1244 (Del. Super. 1987); *see also Finkbiner v. Mullins*, 532 A.2d 609, 617 (Del. Super. 1987) (stating that, on a Rule 12(b)(2) motion, "the burden is on the plaintiff to make a specific showing that this Court has jurisdiction under a long-arm statute.") (citing *Greenly v. Davis*, 486 A.2d 669 (Del. 1984)).
[17] *LaNuova D & B, S.P.A. v. Bowe Co.*, 513 A.2d 764, 768 (Del. 1986).

jurisdiction by contract.[18] If a party properly consents to personal jurisdiction by contract, a minimum contacts analysis is not required.[19] Therefore, if the court concludes that Ritter is bound by the forum selection/consent to jurisdiction clause, then the court can exercise personal jurisdiction over her.

In addition, CGC contends that this court has ancillary jurisdiction over Ritter in her personal capacity. Alternatively, CGC argues that Ritter is equitably estopped from disclaiming the burden of the forum selection clause after receiving the benefit of the contract for stock purchases.[20]

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[18] *Hornberger Mgmt. Co. v. Haws & Tingle Gen. Contrs.*, 768 A.2d 983, 987 (Del. Super. 2000); *see also Sternberg v. O'Neil*, 550 A.2d 1105, 1109 n.4 (Del. 1988) ("A party may submit to a given court's jurisdiction by contractual consent."); *cf. Del Pharm., Inc. v. Access Pharm., Inc.*, 2004 WL 1631355, at *1 (Del. Ch. July 16, 2004) (enforcing a forum selection clause, which designated New York as the exclusive forum for adjudication, to dismiss suit).

[19] *Hornberger*, 768 A.2d at 987; *USH Ventures v. Global Telesystems Group, Inc.*, 1998 WL 281250, at *8 (Del. Super. May 21, 1998) (Letter Op.).

[20] CGC also makes two additional arguments that Ritter is bound by the SRA, neither of which is persuasive.

First, CGC argues that § 1100 of the California Family Code gave Armour the power to consent to personal jurisdiction over Ritter in Delaware. Cal. Fam. C. § 1100(a) states, in pertinent part: "[E]ither spouse has the management and control of the community personal property . . . with like absolute power of disposition . . . ." In essence, CGC argues that Section 1100 makes Armour the agent for Ritter by statute. CGC does not, however, cite a single case in which a California court invoked the California statute to allow one spouse to consent to personal jurisdiction for another spouse. The court finds it unnecessary to address this novel issue under California law.

Second, CGC makes the corollary common law argument that Ritter is subject to suit in Delaware because Armour, acting as her agent, consented to jurisdiction in Delaware in suits relating or arising out of the SRA. Delaware law does not, however, recognize a presumption of agency in a marital relationship. *Facciolo v. State, Div. of Revenue*, 358 A.2d 880, 881 (Del. 1976). Furthermore, simply because a fiduciary relationship exists between two people does not mean that one may bind the other to contracts with third persons. *William M. Young Co. v. Bacon*, 1991 WL 89817, at *5 (Del. Super. May 1, 1991). Instead, the party asserting the existence of agency has the burden of proving consent by the principal. *Facciolo*, 358 A.2d at 881.

In response, Ritter argues that CGC's dispute is with her personally, and that she never personally consented to the jurisdiction of this court. She asserts that she never read the SRA, the Joinder Agreement, or the Purchaser Representation Letters and that she was completely unaware that she was consenting to jurisdiction by this court. Furthermore, she argues that it would be so burdensome as to be inequitable to force her to litigate this case in Delaware.

A. Consent To The Jurisdiction Of This Court

CGC alleges that Ritter has consented to the jurisdiction of this court in suits against the Trust because she is bound by the forum selection/consent to jurisdiction clause contained in the SRA. Forum selection/consent to jurisdiction clauses are "presumptively valid" and should be "specifically" enforced unless the resisting party "could clearly show that enforcement would be unreasonable and unjust, or that the clause was invalid for such reasons as fraud and overreaching."[21]

The Joinder Agreement and Purchaser Representation Letters state that the signatory "carefully read" the SRA and agreed to be bound by its terms. The Trust

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CGC alleges that Armour acted as Ritter's agent in purchasing the stock. CGC further alleges that Armour's status as agent was evidenced by Ritter's consent to the stock purchases and by her regular execution of documents relating to the couple's investment in stock. Even assuming the truth of these allegations, they are insufficient to establish that Armour had the authority to consent to this court having personal jurisdiction over Ritter. Binding Ritter in such a way would go beyond the scope of Ritter's authority. *See, e.g.*, *Facciolo*, 358 A.2d at 881 (holding that, even though husband had authority to a prepare tax return for wife, he did not have authority to sign the tax return and she was, therefore, not liable for it).

[21] *M/S Bremen v. Zapata Off-Shore Co.*, 407 U.S. 1, 15 (U.S. 1972); *accord Burger King Corp. v. Rudzewicz*, 471 U.S. 462, 473 n.14 (U.S. 1985).

Amendment also refers to the SRA and provides that the signatory will be bound by its terms. It is not disputed that Ritter signed all these documents in her capacity as trustee. CGC is clearly correct in arguing that, if the court concludes that the amended complaint states a claim for relief against the Trust, this court has jurisdiction over Ritter as trustee.

Ritter argues, however, that she is not bound by the SRA in her individual capacity and that it is only with her individually that CGC has a dispute.

1. A Claim Against The Trust

The amended complaint alleges the existence of a dispute concerning the transfer restrictions of the SRA arising out of the divorce; namely, that Ritter intends to seek an in-kind distribution of the CGC stock in the divorce. The amended complaint sues both Ritter and Armour in their capacities as trustees and seeks a declaration that, as trustees, they cannot transfer the stock, or any interest in the stock, to Ritter individually because such a transfer would violate the SRA. There is no question that the Trust is bound by the Joinder Agreement, the Purchaser Representation Letters and, through these, the SRA. It was the Trust that was party to the contract purchasing the stock, and the stock is held in the

name of the Trust. Thus, if the amended complaint states a claim for relief against the Trust, the court has the power to exercise jurisdiction over Ritter as trustee.[22]

Ritter argues, however, that CGC has no real dispute with the Trust and that the Trust is not a proper party to this suit, because no meaningful relief can be entered against the Trust that will affect the disposition of the CGC stock in the divorce. This is so, she claims, because the Trust will be revoked as a result of the divorce and the community property contained therein will be distributed to Ritter and Armour without any action on the part of the trustees. In support of this argument, Ritter filed a declaration of her divorce attorney, Bruce Cooperman.

The Cooperman Declaration does not adequately support Ritter's position. Instead, it only states that one of the *possible* outcomes of the divorce is an in-kind distribution of the stock held by the Trust.[23] The Cooperman Declaration goes on to state that "[i]f the CGC stock was divided in-kind" then "either or both of the

[22] Ritter's claim that she did not read the SRA does not mean that the Trust is not bound by it. It is undisputed that Armour signed and knew the contents of the Joinder Agreement, the Purchaser Representation Letters, and the SRA. Nor is it disputed that his signature alone was sufficient to bind the Trust. Ritter also does not dispute that her signature on the documents was sufficient to bind the Trust, whether she read it or not. She only argues that her failure to read the SRA means that it cannot bind her in her individual capacity. Thus, Ritter's contention that she did not read the documents is immaterial to the issue of whether the Trust is bound by the SRA, and equally immaterial as to whether she is bound by the SRA as trustee and properly subject to the jurisdiction of this court.

It should also be noted that Ritter does not claim fraud or collusion by CGC in obtaining Ritter's written consent. Nor does she argue that CGC did not reasonably rely upon evidence of her consent. For these reasons, as between CGC and Ritter in her capacity as trustee, there is no reason to conclude that Ritter has not effectively consented to suit in this jurisdiction in her capacity as trustee.

[23] Cooperman Decl. ¶ 7.

parties would revoke the trust."[24] He does not say that the Trust will necessarily be revoked, nor does he say that an in-kind distribution is the most likely outcome, only that its revocation is one of the *possible* dispositions of the divorce proceeding. Ritter herself does not say that she would revoke the Trust. On the contrary, she has said that she would favor maintaining the Trust and her beneficial interest in it.[25]

Thus, the court concludes that the amended complaint properly states a claim for relief against the Trust. The Trust is a party to the SRA and the amended complaint alleges that Ritter is seeking to obtain rights in CGC shares owned by the Trust that are allegedly inconsistent with the terms of the SRA. That claim, although advanced by Ritter in her individual capacity, gives rise to a ripe controversy between CGC and the Trust as owner of the stock. Ritter is properly named as a defendant on that claim in her trustee capacity.

2. Ancillary Jurisdiction

This court also has discretion to exercise jurisdiction over Ritter personally under principles of ancillary jurisdiction. The court may exercise its discretion to litigate a claim for which personal jurisdiction would not otherwise exist where the claim is brought along with other claims for which jurisdiction does exist that are

[24] Cooperman Decl. ¶ 9.
[25] "I am agreeable to continuing the status quo with respect to our stock through such a trust arrangement." Decl. of Nina Ritter ¶ 10.

sufficiently related to that claim to warrant prosecution before a single tribunal.[26] This exercise of such discretion is consistent with a policy of maximizing judicial economy and efficiency where the substantive due process rights of the parties are not affected.[27]

As explained earlier in this opinion, this court can exercise jurisdiction over Ritter in her capacity as trustee. In addition, to the extent that the claims affect Ritter in her individual capacity, they are sufficiently related to the claim against her as trustee. All of these claims involve the same alleged facts and seek the same relief; namely a declaration that the SRA is valid and that the Trust cannot transfer the stock to Ritter "directly, beneficially, or otherwise."[28] Thus, the factual and legal disputes involved in litigating the claims against Ritter individually will be the same as, or very similar to, the suit against Ritter as a trustee.

Moreover, exercise of jurisdiction over Ritter in her personal capacity comports with due process. Since Ritter is subject to this court's jurisdiction on

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[26] *Fitzgerald v. Chandler*, 1999 WL 1022065, at *4 (Del. Ch. Oct. 14, 1999) (asserting jurisdiction over a tort claim, for which personal jurisdiction would not otherwise exist, where the claim was brought along with a contract claim, and the tort claim was sufficiently related to warrant prosecution before a single tribunal); *Technicorp Int'l II, Inc. v. Johnson*, 1997 WL 538671, at *19 (Del Ch. Aug. 25, 1997) (asserting personal jurisdiction over corporate director defendants for non-fiduciary type claims that are merely factually related to other claims alleging breaches of fiduciary duties); *Baldwin v. Russell*, 1990 WL 13484, at *1 (Del. Ch. Feb. 7, 1990) (same); *Manchester v. Narragansett Capital, Inc*., 1989 WL 125190, at *7 (Del. Ch. Oct. 19, 1989) ("The issue is whether plaintiff's contract claims are sufficiently related to the claims alleging breach of fiduciary duty by the nonresident director defendants so as to require them to appear and defend the contract claims in Delaware.").
[27] *Fitzgerald*, 1999 WL 1022065, at *4.
[28] Compl. p. 9.

the claim brought against her as trustee, it is not necessary to engage in a comprehensive personal jurisdiction review "from scratch."[29] Instead, the inquiry is whether Ritter would be substantively or unfairly prejudiced by this court's exercise of jurisdiction over her personally and, if not, whether judicial economy warrants such an exercise.[30]

Ritter would suffer no prejudice if this court were to exercise jurisdiction over her personally in this matter. This court would be deciding whether the Trust can distribute the stock, or an interest in the stock, to her. Any personal interest she has in the stock is closely related to her interest as a trustee, since the Trust is the owner of the stock. Obviously, all claims will be adjudicated together. The exercise of jurisdiction would also not impose any additional burdens upon Ritter than already flow from the suit against her as a trustee.

The adjudication of CGC's claims by this court will also not offend notions of comity. This court is, of course, mindful that a divorce proceeding is pending in another State's court. However, all this court has been asked to decide is the scope of the property interest that the Trust has in the CGC stock under the terms of the SRA. The SRA is governed by Delaware law and specifically chooses Delaware as the forum to resolve all disputes relating to that agreement. This court sees no likelihood that its decision will interfere with the ability of the California court to

[29] *Fitzgerald,* 1999 WL 1022065, at *4.
[30] *Id.*

resolve the matters at issue in the divorce. On the contrary, this court expects that its judgment will aid the California court in awarding a fair and equitable distribution of property that is also protective of CGC's rights under the SRA, whatever they may prove to be.

B. Equitable Estoppel

As an alternative ground for this court to assert jurisdiction over Ritter, CGC argues that Ritter is equitably estopped from disclaiming the forum selection clause. Specifically, CGC argues that Ritter is trying to assert a contractual right, namely, an ownership interest in the stock held in the Trust, while disclaiming a contractual burden, namely, the forum selection clause contained in the SRA.

In order to find that Ritter is bound by the forum selection clause, it is not necessary to find that she was a party to the SRA. Contractual forum selection clauses have been enforced against third-party beneficiaries and those closely related to the contract. In *Coastal Steel Corp. v. Tilghman Wheelabrator, Ltd.*,[31] the Third Circuit disregarded the argument that a forum selection clause was not binding against a non-signatory to the underlying contract. The Court first noted that forum selection clauses are "presumptively valid" and have generally been enforced because "those clauses promote stable and dependable trade relations."[32] The Court also stated that "the law of contracts . . . has long recognized that third-

[31] 709 F.2d 190, 202 (3d Cir. 1983).
[32] *Id.* at 202-03.

party beneficiary status does not permit the avoidance of contractual provisions otherwise enforceable."[33] The Third Circuit concluded that introducing into the common law a third-party beneficiary exception, allowing third-party beneficiaries to reap the benefits of a contract while avoiding its burdens, would be inconsistent with these principles.[34]

Similarly, in *Hadley v. Shaffer*,[35] the District Court of Delaware enforced a forum selection clause against a non-signatory to the contract. In reaching its conclusion, the court followed a three-part inquiry in determining whether a party who does not sign a contract, can be bound by a forum selection clause contained therein. First, is the forum selection clause valid? Second, are the defendants third-party beneficiaries, or closely related to, the contract? Third, does the claim arise from their standing relating to the merger agreement?[36]

1. Is The Forum Selection Clause Valid?

Forum selection clauses are presumptively valid and have been regularly enforced.[37] Generally, forum selection clauses should be enforced so long as enforcement would not place any of the parties at a substantial and unfair

[33] *Id.* at 203; *accord Dayhoff Inc. v. H.J. Heinz Co.*, 86 F.3d 1287, 1296 (3d Cir. 1996) (stating that third-party beneficiary status does not permit the avoidance of contractual provisions that are otherwise enforceable).
[34] *Coastal Steel*, 709 F.2d at 203.
[35] 2003 WL 21960406, (D. Del. Aug. 12, 2003)
[36] *Id.* at *4.
[37] *See, e.g.*, *Dayhoff*, 86 F.3d at 1303; *Coastal Steel*, 709 F.2d at 202.

disadvantage or otherwise deny a litigant her day in court.[38] Therefore, the defendant bears a heavy burden in claiming that forum selection clause is invalid. As the United States Supreme Court noted in *M/S Bremen*, "it is difficult to see why any such claim of inconvenience should be heard to render [a] forum clause unenforceable" when it is the product of "a freely negotiated private . . . commercial agreement [which] contemplated the claimed inconvenience."[39]

Ritter has alleged that she will be inconvenienced if she is forced to litigate in this court due to the necessity of hiring local counsel, of traveling back and forth from her home in California, and of being unable to care for her three young children. While the court is not blind to these considerations, they are no greater than any party would face in litigating a case in any non-local forum. Moreover, there is nothing in the record that suggests that these burdens would deny Ritter her "day in court." Because Ritter has not alleged any burden sufficient to overcome the presumption in favor of validity, the court concludes that the forum selection clause is valid.

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[38] In *M/S Bremen*, 407 U.S. at 18, the United States Supreme Court stated:

> [I]t should be incumbent on the party seeking to escape his contract to show that trial in the contractual forum will be so gravely difficult and inconvenient that he will for all practical purposes be deprived of his day in court. Absent that, there is no basis for concluding that it would be unfair, unjust, or unreasonable to hold that party to his bargain.

[39] *Id.* at 16.

2. Is Ritter Closely Related To The SRA?

CGC does not allege that Ritter is a third-party beneficiary of the SRA. Instead, CGC argues that she is closely related to the SRA. This is a subtle, but important, distinction.[40] CGC does not argue that Ritter is a third-party beneficiary because, as Ritter rightfully points out, the SRA expressly excludes third-party beneficiaries.[41] Ritter also argues that that she is not closely related to the SRA because she derived no direct benefit from the SRA.

The doctrine of equitable estoppel prevents a non-signatory to a contract from embracing the contract, and then turning her back on the portions of the contract, such as a forum selection clause, that she finds distasteful.[42] As the Fourth Circuit explained:

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[40] The Third Circuit defined the difference this way:

> Under the third party beneficiary theory, a court must look to the intentions of the parties at the time the contract was executed. Under the equitable estoppel theory, a court looks to the parties' conduct after the contract was executed. Thus, the snapshot this Court examines under equitable estoppel is much later in time than the snapshot for third-party beneficiary analysis.

E.I. Dupont de Nemours & Co. v. Rhone Poulenc Fiber & Resin Intermediates, S.A.S., 269 F.3d 187, 200 (3d Cir. 2001); *cf. Hadley*, 2003 WL 21960406, at *6 (holding that the defendant was "closely related" for the same reasons they were third-party beneficiaries); *Jordan v. SEI Corp.*, 1996 WL 296540 (D. Pa. June 4, 1996) (same).

[41] Section 10.17 of the SRA provides, in pertinent part:

> No Third Party Beneficiaries. This Agreement shall not be construed in any manner to constitute a contract for the benefit of or provide any rights to, any Person who is not a Stockholder, any third parties, or any prior creditors of, or any claimants of, the parties hereto.

[42] *Dupont*, 269 F.3d at 200; *see also Am. Bureau of Shipping v. Tencara Shipyard S.P.A.*, 170 F.3d 349, 353 (3d Cir. 1999) (holding non-signatory bound by contract under which it received the direct benefits of lower insurance and the ability to sail under the French flag).

> In the arbitration context, the doctrine recognizes that a party may be estopped from asserting that the lack of his signature on a written contract precludes enforcement of the contract's arbitration clause when he has consistently maintained that other provisions of the same contract should be enforced to benefit him. "To allow [a plaintiff] to claim the benefit of the contract and simultaneously avoid its burdens would . . . disregard equity."[43]

Generally, cases applying this doctrine involve non-signatories who, during the life of the contract, have embraced the contract despite their non-signatory status but then, during litigation, attempt to repudiate the forum selection clause in the contract.[44] In general, a non-signatory is estopped from refusing to comply with a forum selection clause when she receives a "direct benefit" from a contract containing a forum selection clause.[45]

Ritter contends that she derived no direct benefit from the SRA. This is incorrect. Originally, the stock was held individually in Armour's name. While Ritter had a community property interest in the stock, she did not have a direct, beneficial interest in the stock. By putting the stock in trust, Ritter gained just such a beneficial interest. Because CGC would not have allowed these transfers without the Trust and Armour agreeing to the SRA, the SRA provided Ritter with a direct benefit. Furthermore, the subsequent purchases of stock were made by the Trust,

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[43] *Int'l Paper Co. v. Schwabedissen Maschinen & Anlagen GMBH*, 206 F.3d 411, 418 (4th Cir. 2000) (internal citation omitted); *see also Scherk v. Alberto-Culver Co.*, 417 U.S. 506, 519 (U.S. 1974) ("An agreement to arbitrate before a specified tribunal is, in effect, a specialized kind of forum-selection clause.").
[44] *See, e.g., Tencara Shipyard*, 170 F.3d at 353 (non-signatory derived benefit from contract and could not avoid the arbitration clause contained therein).
[45] *Int'l Paper*, 206 F.3d at 418; *Tencara Shipyard*, 170 F.3d at 353.

of which she is a trustee. These subsequent purchases would also not have been allowed without the SRA. Ritter's claim to a community property interest in the stock held in Trust derives from this transfer and these purchases. Therefore, she received a direct benefit from the SRA and the court finds that she is closely related to the SRA.

3. Do The Present Claims Arise From Ritter's Standing Relating To The SRA?

In order for Ritter to be bound by the terms of the forum selection clause, the claims asserted must arise from the SRA.[46] They clearly do. This is a suit to enforce the SRA with respect to stock held in the Trust. Therefore, the claims clearly arise from Ritter's standing relating to the SRA.

The court concludes, from this analysis, that Ritter is equitably estopped from asserting that the SRA does not apply to her.

IV.

For all the foregoing reasons, Ritter's motion to dismiss is DENIED. IT IS SO ORDERED.

[46] *Hadley*, 2003 WL 21960406, at * 6; *see also DuPont*, 269 F.3d at 197.