

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE**

In re:

LEISURE INVESTMENTS HOLDINGS LLC,
et al.,
Debtors.

Chapter 11

Case No. 25-10606 (LSS)

TRADEWINDS, LTD., d/b/a TRADEWINDS
CONSULTING, LTD.,

Plaintiff,

vs.

Adv. Pro. No. 25-51024 (LSS)

CONTROLADORA DOLPHIN, SA de CV,
DOLPHIN LEISURE, INC., GLAS
AMERICAS LLC, as Administrative Agent,
THE PRUDENTIAL INSURANCE
COMPANY OF AMERICA, PRUDENTIAL
LEGACY INSURANCE COMPANY OF
NEW JERSEY and CIGNA HEALTH AND
LIFE INSURANCE COMPANY,

Defendants.

**GLAS AMERICAS LLC'S MEMORANDUM OF LAW IN SUPPORT OF THE MOTION TO
DISMISS THE COMPLAINT PURSUANT TO FED. R. CIV. P. 12(B)**



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Defendant GLAS Americas LLC (“GLAS”), in the above-captioned adversary proceeding (the “Adversary Proceeding”), by and through its undersigned counsel, hereby submits this memorandum of law (the “Brief”) in support of its motion to dismiss (the “Motion to Dismiss”) pursuant to Rule 12 of the Federal Rules of Civil Procedure (“FRCP”), incorporated herein by Rule 7012 of the Federal Rules of Bankruptcy Procedure, and states as follows:

PRELIMINARY STATEMENT¹

1. Plaintiff commenced this adversary proceeding against, among others, “GLAS Americas LLC, as Administrative Agent” for the Secured Lenders. No such party exists. GLAS does not serve as the administrative agent under the 2019 NPA or the 2022 NPA, nor is GLAS aware of any party who currently serves as administrative agent under the relevant financial documents.

2. GLAS serves as the *collateral agent* under the relevant documents, including the 2019 NPA and the 2022 NPA, successor in interest to Wilmington Trust, National Association (“Wilmington Trust”), which also served solely as the collateral agent under the 2019 NPA and 2022 NPA.

3. Apart from naming a party in a nonexistent capacity, on September 19, 2025, Plaintiff attempted to effectuate service on the administrative agent by serving GLAS through its corporate agent. Since GLAS is not the administrative agent, service has not been effectuated upon GLAS. Because there is no administrative agent, service cannot be effectuated on such party in connection with this Adversary Proceeding.

¹ Capitalized terms or phrases not otherwise defined shall have the meaning ascribed to them in the Complaint (defined below).

4. Further, even if Plaintiff had succeeded in serving GLAS, the Complaint must still be dismissed because Plaintiff fails to assert any claim against GLAS, including in its sole capacity as collateral agent. In the Complaint, Plaintiff seeks a judgment declaring the validity and extent of the Secured Lenders' liens on Controladora's property, and determining the priority of any such liens against the liens and security interest of the Secured Lenders. Plaintiff does not seek relief from the Court with respect to GLAS or any such collateral agent. In any event, there is no plausible claim or controversy today that GLAS has not complied with any order of this Court or otherwise regarding the Collateral it holds in its capacity as collateral agent. For this independent reason, and irrespective of whether Plaintiff had properly identified GLAS as the collateral agent, the Complaint is due to be dismissed against GLAS.

5. For these reasons, GLAS files the Motion to Dismiss seeking to dismiss the Complaint as against GLAS.

STATEMENT OF NATURE AND STAGE OF PROCEEDINGS

6. On June 18, 2025, Plaintiff filed a *Complaint and Request for Declaratory Judgment to Determine Validity, Priority, and Extent of Liens on Debtors' Property* (the "Complaint") related to liens on assets of Controladora as well as the assets of Dolphin Leisure arising from a domesticated judgment from an arbitration award.

7. A summons was issued on September 12, 2025 [D.I. 3] and service was attempted on GLAS, as administrative agent on or about September 18, 2025.

8. On October 10, 2025, a stipulation was filed extending the deadline for all Defendants to file a response to the Complaint.

9. On October 14, 2025, this Court entered an order approving the stipulation and extending the time for parties to respond to the Complaint to October 28, 2025. [D.I. 7]. The Motion to Dismiss is GLAS' response to the Complaint.

FACTUAL BACKGROUND

10. The Complaint details a dispute between Plaintiff and the Secured Lenders as to the priority of their claims against the Debtors, with Plaintiff's purported lien arising from an arbitration for breach of contract, for which Plaintiff obtained an award against only two of the Debtors, Grupo Dolphin and Controladora in 2016. Compl. ¶¶ 15, 20-21.

11. That award was reduced to Judgment, and was domesticated in Florida in 2017. *Id.* ¶¶ 21- 22.

12. During this time, Wilmington Trust served as collateral agent for the Secured Lenders under the terms and conditions of a 2019 NPA and 2022 NPA.

13. In March 2025, Wilmington Trust resigned as collateral agent and GLAS succeeded as collateral agent with respect to the 2022 NPA.

14. In the Complaint, Plaintiff asserts that defendant "GLAS AMERICA LLC" is the administrative agent for the Debtor's prepetition first lien secured lenders . . . and the administrative agent for the Debtors' prepetition second lien secure lenders . . ." Compl. ¶ 4.

15. It is undisputed that GLAS is not an administrative agent under the 2019 NPA, 2022 NPA, or any of the relevant prepetition agreements, nor does any such administrative agent exist under such agreements. The applicable documents are undisputed that there is only a collateral agent capacity thereunder, and that GLAS serves as collateral agent under such agreement. The Complaint fails on its face to bring any claim against GLAS in its capacity as collateral agent.

LEGAL STANDARD

16. A claim may be dismissed under FRCP 12(b)(2) where the court lacks personal jurisdiction. Fed. R. Civ. P. 12(b)(2). When reviewing a motion to dismiss pursuant to FRCP 12(b)(2), a court must accept as true all allegations of jurisdictional fact made by plaintiff and

resolve all factual disputes in plaintiff's favor. *Adtile Techs. Inc. v. Perion Network Ltd.*, 192 F. Supp. 3d 515, 520 (D. Del. 2016).

17. A claim may also be dismissed under FRCP 12(b)(4) where the summons is void. *Ayres v. Jacobs & Crumplar, P.A.*, 99 F.3d 565, 569 (3d Cir. 1996) (stating under FRCP 12(b)(4) if a summons fails to properly name the parties pursuant to Rule 4(a), it is void.). Further, dismissal under FRCP 12(b)(5) is proper where service of process is deficient. *Wright & Miller*, 5B Fed. Prac. & Proc. Civ. § 1353 (“A Rule 12(b)(5) motion is the proper vehicle for challenging the mode of delivery or the lack of delivery of the summons and complaint.”).

18. Finally, a claim may also be dismissed under FRCP 12(b)(6) for “failure to state a claim upon which relief can be granted.” *In re Majestic Star Casino, LLC*, 716 F.3d 736, 745 (3d Cir. 2013) (applying 12(b)(6) to bankruptcy proceedings).

19. To survive a motion to dismiss, the plaintiff must provide “more than labels and conclusions, and a formulaic recitation of the elements of a cause of action will not do . . . [.]” *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 555 (2007); *see also Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009); *Robinson v. Fam. Dollar*, 679 Fed.Appx. 126, 131–32 (3d Cir. Feb. 9, 2017) (outlining pleading requirements); *Mosley v. Bank of Am.*, 2024 WL 224336, at *1 (3d Cir. Jan. 22, 2024) (affirming dismissal where plaintiff did not include specific factual allegations sufficient to demonstrate the elements of his claim).

20. While the Court is generally required to accept factual allegations as true, it is “not compelled to accept ‘unsupported conclusions and unwarranted inferences,’ or ‘a legal conclusion couched as a factual allegation[.]’” *Baraka v. McGreevey*, 481 F.3d 187, 195 (3d Cir. 2007) (citations omitted).

21. Because Plaintiff fails to name an alleged necessary party, and the party it names does not exist, Plaintiff has utterly failed to plead sufficient facts to support its claims against GLAS and the Complaint should be dismissed. Even if Plaintiff is given leave to amend its complaint against GLAS, the Complaint is still entirely deficient to plead a claim against GLAS. It is without doubt that there are no claims or controversies alleged against GLAS, all of which the Plaintiff asserts against Secured Lenders.

ANALYSIS

a. The Court Lacks Jurisdiction Over GLAS and GLAS, as Administrative Agent.

22. GLAS, as administrative agent under the relevant financial documents, does not exist. It is clear that a Court does not have jurisdiction over a party named in a nonexistent capacity and, where a party was improperly or incorrectly named, courts routinely dismiss complaints against those incorrect parties. *See McCaughey v. Unum Provident Corp.*, No. Civ.A. 03-6571, 2004 WL 792366, at *1 (E.D. Pa. Mar. 19, 2004) (holding that “plaintiff’s complaint will be dismissed as it pertains to . . . an improper party to this litigation, but the Court will grant plaintiff leave to file a motion to amend pursuant to Rule 15 of the Federal Rules of Civil Procedure, to name the correct defendant.”); *Dunn as Tr. of GCX Liquidating Tr. v. Barney*, No. 19-12031, 2024 WL 667366, at *1 (Bankr. D. Del. Feb. 16, 2024) (“Because the Court lacks personal jurisdiction over the Defendants, the Motion to Dismiss is granted, without prejudice.”).

23. Because a court cannot create jurisdiction with the “stroke of a pen when it does not exist,” the Complaint should be dismissed as against GLAS. *Schake v. Colt Indus. Operating Corp. Severance Plan for Salaried Emps.*, 960 F.2d 1187, 1191 (3d Cir. 1992).

b. The Summons Names a Party in a Nonexistent Capacity and Service was not Effectuated.

24. Because GLAS, as administrative agent does not exist, any naming of such entity in the Summons renders the Summons void. As such, all claims against GLAS, administrative agent, must be dismissed. *Kovalev v. Lab'y Corp. of Am. Holdings*, No. 22-0552, 2023 WL 2163860, at *21 (E.D. Pa. Feb. 22, 2023) (“Rule 12(b)(4) applies where a summons and complaint are deficient in naming the proper defendant, including by filing suit against an entity that does not exist. . . ‘If there is no such entity as a captioned defendant, all claims against that non-existent entity must be dismissed.’” (citations omitted)); *Cropp v. Golden Arch Realty Corp.*, No. 08-cv-0096, 2009 WL 10710585, at *2 (D.S.C. Mar. 31, 2009) (same).

25. Further, courts routinely dismiss complaints where the party cannot be served. *See Saul v. Seeking Alpha Inc.*, No. 23-1405, 2023 WL 8091852, at *1 n.1 (D.N.J. Nov. 21, 2023) (“Failure to serve, absent a showing of good cause for the failure by Plaintiff, is grounds for dismissal of the Individual Defendants pursuant to Federal Rule of Civil Procedure 4.”). For these reasons, the Complaint should be dismissed as against GLAS.

c. Plaintiff Fails to Plead any Claims with Respect to GLAS or any Collateral Agent.

26. Even if Plaintiff named GLAS in its proper capacity as collateral agent, the Complaint must be dismissed as against GLAS. As an initial matter, the Complaint has only one sentence referencing GLAS and it is purely for background in identifying parties. Compl.¶ 4. There is no other mention of GLAS, or a request for any relief as to GLAS in the Complaint. Where a complaint fails to assert any claim against a party, that party must be dismissed from the complaint. *McIntosh v. USAA Cas. Ins. Co.*, No. 2:23-CV-02958, 2023 WL 6543504, at *1 (E.D. Pa. Oct. 6, 2023) (“To survive a motion to dismiss, a complaint must contain sufficient factual

matter, accepted as true, to state a claim to relief that is plausible on its face.” Further, “a potential plaintiff can’t just assert a claim without a basis and hope to sort it out later.” (citations omitted)).

27. Additionally, taking the singularly declaratory judgment claim as true and construing it in the light most favorable to the Plaintiff, the claim fails because there is no actual administrative agent and there are no claims asserted against such agent. *Bilyeu v. Phoenixville Hosp. Co., LLC*, No. 17-1456, 2017 WL 2572515, at *2 (E.D. Pa. June 14, 2017) (noting that “A claim cannot be denied if it does not exist.”); *McCaughey*, No. Civ.A. 03-6571, 2004 WL 792366, at *2 (granting motion to dismiss on the basis that the wrong party was named and granting plaintiff leave to file a motion to amend pursuant to FRCP 15 to file an amended complaint which include the proper party).

28. Paragraph 34 expressly sets forth the declaratory relief requested to: “(i) that Tradewinds is the holder of a valid judgment lien against the Collateral and (ii) that Tradewinds’ lien on the Collateral are senior to the liens of the Secured Lenders.” On its face, Plaintiff seeks no declaration or related relief regarding GLAS, and the requested relief can be determined in its entirety without involving GLAS.

29. Because the Plaintiff does not, and cannot assert a valid claim against a party in any capacity—where it does not exist—dismissal as against GLAS under FRCP 12(b)(6) is proper.

d. Amendment of the Complaint as to GLAS is Futile.

30. As demonstrated above, Plaintiffs have plead no facts to support a claim against GLAS in any capacity and cannot as GLAS serves in a custodial capacity with respect to the relevant financial documents. Therefore, the Court should dismiss the Complaint with prejudice, because there is no viable amendment to be had. When amendment of a complaint would be futile because no facts exist that would allow a plaintiff to state a claim for relief, the complaint should be dismissed with prejudice and without leave to amend. *In re Burlington Coat Factory Sec. Litig.*,

114 F.3d 1410, 1434 (3d Cir. 1997) (“‘Futility’ means that the complaint, as amended, would fail to state a claim upon which relief could be granted.” (citations omitted)); *In re SRC Liquidation LLC*, 581 B.R. 78, 94 (D. Del. 2017) (“[T]he Bankruptcy Court had discretion to deny a request to amend (i.e., to dismiss with prejudice) ‘if it is apparent from the record that . . . amendment would be futile.’” (citations omitted)); *Pennsylvania Employee Benefit Trust Fund v. Zeneca, Inc.*, 710 F.Supp.2d 458, 486 (D. Del. 2010) (“[D]ismissal of a count in a complaint with prejudice is appropriate if amendment would be inequitable or futile.”) (citations omitted)).

CONCLUSION

WHEREFORE, GLAS respectfully requests that this Court dismiss all claims against GLAS in its capacity as administrative agent, and grant such other and further relief as this Court deems just and proper.

Dated: October 28, 2025

By: /s/ Evelyn J. Meltzer

Evelyn J. Meltzer (DE No. 4581)

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CERTIFICATE OF SERVICE

I, Evelyn J. Meltzer, hereby certify that on the 28th of October 2025, I caused the foregoing to be served upon the parties set forth below, in the manner indicated; and all ECF participants registered in this case were served electronically on the date of filing through the court's ECF system at their respective email addresses registered with the court.

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