RECORD NO. 16-3852

In The
United States Court of Appeals
For The Third Circuit

ANDREW PANICO,

Plaintiff – Appellant,

v.

PORTFOLIO RECOVERY ASSOCIATES, LLC,

Defendant – Appellee.

ON APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF NEW JERSEY

BRIEF OF APPELLEE

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CORPORATE DISCLOSURE STATEMENT

Pursuant to Rule 26.1 and Third Circuit LAR 26.1, Defendant-Appellee Portfolio Recovery Associates, LLC makes the following disclosure:

1. For non-governmental corporate parties please list all parent corporations:

Defendant-Appellee Portfolio Recovery Associates, LLC is a Delaware limited liability company and is a wholly owned subsidiary of PRA Group, Inc., a publicly traded company.

2. For non-governmental corporate parties please list all publicly held companies that hold 10% or more of the party's stock:

No publicly held corporation owns 10% or more of PRA Group, Inc. stock.

3. If there is a publicly held corporation which is not a party to the proceeding before this Court but which has as a financial interest in the outcome of the proceeding, please identify all such parties and specify the nature of the financial interest or interests:

None.

4. In all bankruptcy appeals counsel for the debtor or trustee of the bankruptcy estate must list: 1) the debtor, if not identified in the case caption; 2) the members of the creditors' committee or the top 20 unsecured creditors; and, 3) any entity not named in the caption which is an active participant in the bankruptcy proceeding. If the debtor or trustee is not participating in the appeal, this information must be provided by appellant.

N/A

/s/ Stephen C. Piepgrass Dated: January 11, 2017
Stephen C. Piepgrass
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I. STATEMENT OF SUBJECT MATTER AND APPELLATE JURISDICTION

This is an appeal from an Order of the United States District Court for the District of New Jersey, entered on September 15, 2016, granting the Motion for Summary Judgment of Defendant Portfolio Recovery Associates, LLC ("PRA"). A2. The District Court had jurisdiction pursuant to 28 U.S.C. § 1331 because a claim was asserted under the Fair Debt Collection Practices Act, 15 U.S.C. § 1692 *et seq*. ("FDCPA"). Supplemental jurisdiction over the pendant state-law claim under the New Jersey Consumer Fraud Act, N.J. Rev. Stat. § 56:8-1 *et seq.*, arose in the District Court under 28 U.S.C. § 1367(a).

Plaintiff's Notice of Appeal was timely filed on October 13, 2016. A1. This Court has jurisdiction pursuant to 28 U.S.C. § 1291 inasmuch as the District Court's Order of September 15, 2016, disposed of all claims before it. A2.

II. STATEMENT OF ISSUE PRESENTED FOR REVIEW

Whether the District Court properly granted summary judgment to PRA on Panico's claims under the FDCPA and the New Jersey Consumer Fraud Act where the straightforward application of Delaware law pursuant to a contractual choice-of-law provision rendered PRA's collection action against Panico timely, thereby negating an essential element of Panico's claims.

III. STATEMENT OF RELATED CASES AND PROCEEDINGS

There are no related completed cases or proceedings that have previously been before this Court or that are currently before this Court.

IV. STATEMENT OF THE CASE

Introduction

This case is about a contractual choice-of-law provision that mandates "the laws of the State of Delaware" apply to a collection action filed by PRA against Panico in New Jersey state court. Accepting for purposes of summary judgment Panico's argument that this choice-of-law provision required the application of Delaware's three-year limitations period to PRA's collection action, the District Court correctly found Delaware's non-resident tolling provision must apply as well. The District Court thus rejected Panico's attempt to take advantage of those portions of Delaware law that favor him while ignoring those portions that do not.

Statement of Facts[1]

Panico, a New Jersey resident, amassed a credit card debt of $43,970.16, on which he last made a payment on April 28, 2010. A20, 48, ¶¶ 9, 11. The debt became delinquent roughly two months later, on June 18, 2010, and rights to the debt were subsequently assigned to PRA. A47-48. PRA initiated a collection action against Panico in New Jersey state court on or after October 20, 2014. A47, ¶ 1.

[1] For purposes of this appeal, the underlying facts of this case are not in dispute, most having been stipulated by the parties for purposes of summary judgment in the District Court. A47-48.

PRA's collection action was timely under New Jersey law, which provides a six-year limitations period for such an action. N.J. Rev. Stat. § 2A:14-1. A47, ¶ 2. Panico's account, however, was governed by a written credit card agreement, which provided as follows:

> This Agreement is made in Delaware. It is governed by the laws of the State of Delaware, without regard to its conflict of laws principles, and by any applicable federal laws. A48, ¶ 8, 54.

Rather than answering PRA's complaint, Panico filed a motion for summary judgment, A24-25, relying on the choice-of-law provision in his credit card agreement for one particular "law of the State of Delaware," 10 Del. C. § 8106 ("Section 8106"), which provides in pertinent part that:

> no action based on a detailed statement of mutual demands in the nature of debit and credit between parties arising out of contractual or fiduciary relations . . . shall be brought after the expiration of 3 years from the accruing of such action; subject, however, to the provisions of §§ 8108-8110, 8119 and 8127 of this title.

10 Del. C. § 8106.

While PRA's collection action was filed within New Jersey's six-year limitations period – and thus was timely under New Jersey law – it fell outside the three-year period set forth in Section 8106. A47, ¶ 2. Panico's summary judgment motion, based not on New Jersey's six-year limitations period but on the alleged "expiration of the statute of limitations" borrowed from Delaware law, thus relied entirely on the choice-of-law provision in his credit card agreement. A24-25.

Choosing not to contest the issue in state court, PRA opted instead to dismiss its collection complaint against Panico with prejudice. A25. Not content with the dismissal of the action, Panico then filed a Class Action Complaint against PRA in the District Court for purported violations of the FDCPA, 15 U.S.C § 1692 *et seq.* and the New Jersey Consumer Fraud Act, N.J. Rev. Stat. § 56:8-1 *et seq.*, based on PRA's filing of a collection action that was allegedly time-barred under Section 8106.

Procedural History

Panico's Class Action Complaint, like the summary judgment motion before it, relied on the Delaware choice-of-law provision from his credit card agreement to attempt to invoke Section 8106's three-year limitations period. A7, 24. But for this three-year limitations period derived from the Delaware statute, Panico's Class Action Complaint would fail for the simple reason that PRA's collection action against him was timely filed within New Jersey's applicable six-year limitations period. A27.

In response to Panico's Complaint, and assuming that Delaware law applied, PRA relied on the same choice-of-law provision to invoke another related Delaware law, 10 Del. C. § 8117 ("Section 8117"), A6-7, a statute long considered "part and parcel" of Section 8106. *D'Angelo v. Petroleos Mexicanos*, 398 F. Supp. 72, 80 (D. Del. 1975) ("For over 120 years a tolling provision like section 8117 has

been part and parcel of the three year statute of limitations"). Section 8117 is Delaware's non-resident tolling provision. It provides that:

> [i]f at the time when a cause of action accrues against any person, such person is out of the State, the action may be commenced, within the time limited therefor in this chapter, after such person comes into the State in such manner that by reasonable diligence, such person may be served with process. If, after a cause of action shall have accrued against any person, such person departs from and resides or remains out of the State, the time of such person's absence until such person shall have returned into the state in the manner provided in the section shall not be taken as any part of the time limited for the commencement of this action.

10 Del. C. § 8117.

Under Section 8117, PRA argued, even assuming Delaware's three-year limitations period applied to its New Jersey collection action, that limitations period was tolled – and PRA's action was timely – because Panico was never in Delaware as required by the statute. A6-7. As the District Court noted, the "central issue to be decided, then, is whether PRA's claim was tolled under Delaware law." A7.

By mutual agreement the parties presented this question to the District Court for summary judgment, submitting an agreed-upon list of sixteen stipulations, including the following:

- Plaintiff has never lived in Delaware (A47, ¶ 12);
- Plaintiff has never visited Delaware (A47, ¶ 13);
- Plaintiff does not own property in Delaware (A47, ¶ 14);

- Plaintiff has never been amenable to service of process in Delaware (A47, ¶ 15); and

- Plaintiff has never been subject to personal jurisdiction in Delaware (A47, ¶ 16).

Rejecting Panico's invitation to use the choice-of-law provision to apply one Delaware statute (Section 8106), but ignore the other related statute (Section 8117) (*see Bd. of Regents v. Tomanio*, 446 U.S. 478, 485, 488 (1980) ("'tolling' [provisions] . . . are an integral part of a complete limitations policy," and therefore, when borrowing a limitation period, "'borrowing' logically include[s] [state] rules of tolling.")), the District Court found that:

> the Parties' Stipulations Regarding Summary Judgment bring this case squarely within the plain language and ambit of Delaware's tolling provision, which preserved PRA's claims in the State Court Action. At all times, Plaintiff was "out of the state" and was "not otherwise subject to service of process in the state" of Delaware. A7-8.

The District Court issued its opinion consistent with this finding on September 14, 2016, A3-11, and entered its Order granting PRA's Motion for Summary Judgment and dismissing Panico's Complaint with prejudice on September 15, 2016, thereby resolving all claims before the District Court. A2. This appeal followed. A1.

V. STATEMENT OF THE STANDARD OF REVIEW

This Court conducts a plenary review of a district court's decision granting summary judgment. *MCI Telecomm. Corp. v. Bell Atlantic-Pennsylvania*, 271 F.3d 491, 515 (3d Cir. 2001). Thus, this Court "reviews the district court's grant of summary judgment de novo, applying the same standard as the district court." *Ideal Dairy Farms v. John Labatt, Ltd.*, 90 F.3d 737, 743 (3d Cir. 1996) (quotation omitted).

VI. SUMMARY OF ARGUMENT

The District Court properly granted summary judgment to PRA with respect to Panico's claims under the FDCPA and the New Jersey Consumer Fraud Act. The District Court held Panico's claims, which rely on the assertion that PRA filed an untimely action against him in New Jersey to collect $43,970.16 in credit card debt, ultimately fail as a matter of law because PRA's collection action was timely under Delaware law. Regardless whether the law of Delaware or New Jersey – with its longer limitations period – applies, however, PRA's collection action was timely. The District Court's grant of summary judgment should be affirmed.

Although PRA initially sued Panico, a New Jersey resident, in New Jersey state court, the card agreement covering Panico's account specified that it was "governed by the laws of the State of Delaware, without regard to its conflict of laws principles, and by any applicable federal laws." A48, 54. Delaware's limitation period for credit card debt is three years; New Jersey's is six. By stipulation, the parties agreed that PRA sued Panico "more than three years but less than six years" after PRA's cause of action against him accrued. A47, ¶ 2. Thus, Panico argued, PRA's claim was untimely under Delaware law. On this basis, Panico brought his claims against PRA in the District Court.

PRA responded that because Panico had never been physically present or subject to service of process during the relevant timeframe, PRA's collection

action was timely because the statute of limitations had been tolled under Delaware's non-resident tolling provision, Section 8117.

The parties also stipulated to facts sufficient to demonstrate that Panico came "squarely within the plain language and ambit of Delaware's tolling provision, which preserved PRA's claims in the State Court Action." A7. Because PRA's underlying collection action was timely under Delaware law, on which Panico relied, the District Court properly granted summary judgment in PRA's favor with respect to Panico's FDCPA and state-law claims, both of which were founded on PRA's allegedly stale state court complaint.[2]

Panico argues on appeal that Section 8117 applies only when a defendant is *nowhere* amenable to process, rather than simply being outside the State of Delaware, as the Delaware Supreme Court has unambiguously held. Because such an extreme misapplication of Section 8117 effectively reads the tolling statute out

[2] The District Court's grant of summary judgment may also be affirmed should this Court conclude that New Jersey's six-year limitation period controlled. *See Mack Trucks, Inc. v. Bendix-Westinghouse Auto. Air Brake Co.*, 372 F.2d 18, 20 (3d Cir. 1966) (the statute of limitations is "ordinarily a matter of procedure . . . and is therefore, like other procedural attributes, controlled by the law of the forum rather than the law of the state whose law otherwise governs the cause of action."). *See also Marx v. Meridian Bancorp., Inc.,* 32 F. App'x 645, 648 (3d Cir. 2002) ("However, we may affirm the summary judgment decision of the District Court if it could have been reached on any ground below, including grounds rejected or not reached by the District Court.") (citing *University of Maryland v. Peat Marwick Main & Co.,* 923 F.2d 265 (3d Cir. 1991)).

of the Delaware Code entirely, it is unsurprising that the authority cited by Panico fails to support his position.

Nor should this Court accept Panico's invitation to modify or amend Section 8117 by judicial fiat merely to suit his purposes. As the Court of Appeals for the Ninth Circuit has held in a strikingly similar case applying New Hampshire law, Panico's "suggested gloss" on Delaware's tolling statute improperly "seeks to take advantage of the portions of [Delaware] law that are favorable to [him] and ignore the balance." *Avery v. First Resolution Mgmt. Corp.*, 568 F.3d 1018, 1023 (9th Cir. 2009).

Moreover, even if, as Panico also argues, the indefinite tolling that results from applying Section 8117 to him is somehow "absurd" or otherwise unconscionable, the appropriate remedy is not the piecemeal application of only those portions of Delaware law favorable to him, as he now suggests. Rather, it is the application of the law of the forum state, New Jersey, with its six-year limitations period, which likewise defeats his claims. A74, ¶ 2.

Here, either Delaware law applies or it does not. If it does apply, it must be applied *in toto* – and as a Delaware court would apply it – meaning that PRA's collection action was timely filed under Delaware's tolled three-year limitations period. If Delaware law does not apply – for whatever reason – then New Jersey law is the only other option, and the law of that State is also fatal to Panico's

claims. Either way, the District Court properly granted summary judgment in PRA's favor, and this Court should affirm its decision.

VII. ARGUMENT

A. The District Court Correctly Applied Delaware's Tolling Provision To Find PRA's State Court Action Timely.

Assuming the parties' choice-of-law provision required the application of Delaware's limitations law, the District Court correctly applied Delaware's tolling provision as well, thereby tolling the three-year limitations period applicable to PRA's collection action because Panico was "outside the state and [was] not otherwise subject to service of process in the state" of Delaware. *See Saudi Basic Indus. Corp. v. Mobil Yanbu Petrochemical Co.*, 866 A.2d 1, 18 (Del. 2003) ("It is settled law that the purpose and effect of Section 8117 is to toll the statute of limitations as to defendants who, at the time the cause of action accrues, are outside the state and are not otherwise subject to service of process in the state. In those circumstances, the statute of limitations is tolled until the defendant becomes amendable to service of process."). *See also City of Philadelphia, et al. v. Lead Indus. Ass'n, Inc. et al.*, 994 F.2d 112, 123 (3d Cir. 1993) ("Our role is to apply the current law of the appropriate jurisdiction, and leave it undisturbed.").

1. Section 8117 is unambiguous on its face and, as held by the Delaware Supreme Court, applies to all defendants, including Panico, who are "outside the state and are not otherwise subject to service of process in the state" of Delaware.

Although conspicuously absent from the body of Panico's Opening Brief, the issue now before the Court rises or falls on the application of a specific Delaware statute, 10 Del. C. § 8117:

> [i]f at the time when a cause of action accrues against any person, such person is *out of the State*, the action may be commenced, within the time limited therefor in this chapter, after such person comes *into the State* in such manner that by reasonable diligence, such person may be served with process. If, after a cause of action shall have accrued against any person, such person *departs from* and resides or *remains out of the State*, the time of such person's absence until such person shall have returned into the state in the manner provided in the section shall not be taken as any part of the time limited for the commencement of this action.

(Emphasis added).

Panico does not – and cannot – point to any ambiguity in this statutory language. This is hardly surprising. Section 8117 has been "part and parcel" of Delaware's Limitation of Actions code – and the specific three-year limitations period invoked by Panico – since before the Civil War, and Panico identifies no Delaware authority finding its language ambiguous. *D'Angelo*, 398 F. Supp. at 80 ("For over 120 years a tolling provision like section 8117 has been part and parcel of the three year statute of limitations"). Where, as here, there is no ambiguity,

there is no room for construction or interpretation, and the statute must be held to mean what it plainly expresses.

> Construction and interpretation have no place or office where the terms of a statute are clear and certain and its meaning is plain. When its language is unambiguous and its meaning evident, it must be held to mean what it plainly expresses, and no room is left for construction. In such a case argument from the reason, spirit, or purpose of the legislation, from the mischief it was intended to remedy, from history or analogy for the purpose of searching out and justifying the interpolation into the statute of new terms, and for the accomplishment of purposes which the law making power did not express, are worse than futile. They serve only to raise doubt and uncertainty where none ought to exist, to confuse and mislead the judgment, and to pervert the statute.
>
> It is clearly within the power of the Legislature to fix the period within which actions shall be brought, without any exceptions whatever.

Lewis v. Pawnee Bill's Wild West Co., 66 A. 471, 473 (Del. 1907) (citation omitted).[3]

Based on these principles, the Delaware Supreme Court has properly interpreted Section 8117 to mean precisely what it says, finding a defendant such as Panico "out of the State" when he is "out of the state" and "lack[ing] sufficient

[3] *See also Conn. Nat'l Bank v. Germain*, 503 U.S. 249, 253-54 (1992) ("[I]n interpreting a statute a court should always turn first to one, cardinal canon before all others. We have stated time and time again that courts must presume that a legislature says in a statute what it means and means in a statute what it says there. When the words of a statute are unambiguous, then, this first canon is also the last: 'judicial inquiry is complete.'") (citations omitted)); *In re Visteon Corp.*, 612 F.3d 210, 219 (3d Cir. 2010) ("The words of a statute are not to be lightly jettisoned by courts looking to impose their own logic on a statutory scheme.").

contacts with Delaware . . . [so that] Delaware courts would have lacked personal jurisdiction." *Saudi Basic,* 688 A.2d at 18 ("It is settled law that the purpose and effect of Section 8117 is to toll the statute of limitations as to defendants who, at the time the cause of action accrues, are outside the state and are not otherwise subject to service of process in the state.").[4]

Here, the parties stipulated to all material facts necessary to show that PRA's collection action was timely filed. Stipulations 12 and 13 establish that Panico was always "out of the State." A48. Stipulations 15 and 16 confirm that he was "not otherwise subject to service of process in the state" of Delaware. A48. As a result, Section 8117's tolling provision applies by its plain terms under *Saudi Basic*,[5] rendering PRA's collection action timely under Delaware's three-year limitations

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[4] *See also D'Angelo*, 398 F. Supp. at 82, discussing *Shreve's Adm'r v. Wells & Sappington,* 7 Del. (2 Houst.) 209 (Super Ct. 1860), *rev'd* 7 Del. (2 Houst.) 329 (1861), and noting in that case that, but for a pleading defect, Section 8117 would have tolled limitations in the absence of personal jurisdiction over the defendant, even though an *in rem* proceeding was available in Delaware, and that "if the plaintiff had pleaded that defendants were absent from the state when the cause of action accrued and that they continued to be absent up to within six years of the commencement of the suit, the tolling statute would have saved the claim from the limitations defense notwithstanding that the action had been begun by foreign attachment." *D'Angelo*, 398 F. Supp. at 82. Here, the parties have stipulated that Panico owned no property in Delaware, rendering even such *in rem* jurisdiction unavailable. A48, ¶ 14 ("Plaintiff does not own property in Delaware.").

[5] *See CACV of Colo. LLC v. Stevens*, 274 P.3d 859, 867 (Ore. App. 2012) (applying Section 8117, noting that "the Delaware Supreme Court applied a literal interpretation of section 8117 – viz., so long as a defendant who at some point could be sued in Delaware is outside the state and not otherwise subject to service of process in the state, then the applicable statute of limitation is tolled").

period as a matter of law. Where a collection action is timely, summary judgment is warranted with respect to an FDCPA claim based on the alleged untimeliness of that collection action. *See Avery v. First Resolution Mgmt. Corp.*, No. 06-1812, 2007 U.S. Dist. LEXIS 39260, at *14-15 (D. Ore. May 25, 2007), *aff'd*, 568 F.3d 1018 (9th Cir. 2009) (the "court finds as a matter of law that the underlying debt is not time-barred" and that "summary judgment is warranted in favor of defendants on plaintiff's FDCPA claims to the extent they depend upon an attempt to collect an allegedly time-barred debt.").

2. Panico's "*Hurwitch* line of cases" do not stand for the proposition that Delaware's tolling provision may be ignored whenever a defendant is subject to service of process in a forum other than Delaware.

In an effort to avoid the straightforward application of Section 8117 under *Saudi Basic*, Panico directs the Court to the Delaware Supreme Court's decision in *Hurwitch v. Adams*, 155 A.2d 591 (Del. 1959), and subsequent Delaware cases, asserting that they stand for the proposition that Section 8117's tolling provision may be ignored when a non-resident defendant is subject to service of process and jurisdiction in *any* foreign forum. They do not.

As an initial matter, *Hurwitch* and its progeny are not relevant here because *none* of them actually applied Section 8117, the statute at issue in this case. Rather, *Hurwitch* and the case on which it relied, *Pawnee Bill*, stand for the unremarkable proposition that Section 8117, first enacted in 1852, should not be

applied by the court to toll a personal-injury statute of limitations subsequently enacted in 1897, where the "said act of 1897 contains no savings clause whatever, and no reference to any savings clause in any other statute." *See Pawnee Bill*, 66 A. at 473. *See also Hurwitch*, 155 A.2d at 594 ("[T]he answer to the argument lies in the direct holding of the *Pawnee Bill* case to the contrary . . . that the two code sections are completely independent of each other."). Because neither *Hurwitch* nor its predecessor, *Pawnee Bill*, actually applied Section 8117, neither has any bearing on the issue now before the Court.[6]

In *Hurwitch*, moreover, the non-resident defendant was subject to service of process under Delaware's Non-Resident Motorist Act, 10 Del. C. § 3112, which was sufficient for personal jurisdiction *in Delaware*. 155 A.2d at 593 ("Throughout the one-year period following these accidents, all of the defendants named below could have been served by substitution under 10 Del. C. § 3112, a statute designed to obtain jurisdiction over non-residents using Delaware highways. *As far as due process of law is concerned, such service is the equivalent of personal service*.") (emphasis added)).[7]

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[6] *See D'Angelo*, 398 F. Supp. at 81 ("This statement was made in a case [*Pawnee Bill*] where no tolling statute existed . . . *Hurwitch v. Adams* . . . ha[s] even less relevance than the *Pawnee Bill* case.").

[7] Because *Pawnee Bill*, decided in 1907, pre-dated the Delaware Non-Resident Motorist Act, such substituted service was not possible. Nonetheless, the court found the tolling provision of Section 8117 inapplicable to the then one-year personal-injury limitations period. 66 A. at 474 ("In our opinion

Unsurprisingly, the same or similar reasoning is true for every single case Panico cites in his "*Hurwitch* line of cases." *See, e.g. Klein v. Lionel Corp.*, 130 F. Supp. 725 (D. Del. 1955) (long-arm service under the Clayton Act, 15 U.S.C. § 22); *Sternberg v. O'Neil,* 550 A.2d 1105 (Del. 1988) (corporation could be served via Delaware statute providing for substituted service of process on nonqualifying foreign corporations); *Brossman v. FDIC,* 510 A.2d 471 (Del. 1986) (applicable long-arm provision was passed during relevant time frame so that once defendant became subject to service of process via the long-arm statute, the statute of limitations began to run); *Viars v. Surbaugh,* 335 A.2d 285 (Del. Super. Ct. 1975) (like *Hurwitch*, substituted service available via the Delaware non-resident motorist statute); *John J. Molitor, Inc. v. Feinberg,* 258 A.2d 295 (Del. Super. Ct. 1969) (subject to service pursuant to 10 Del. Civ. Code § 3104, allowing service of process on non-residents doing business in the state). The common thread throughout is that "[i]n all of these cases . . . the service was the equivalent to personal service on the defendant because in each case the service was sufficient to have permitted the Court to have rendered an in personam judgment against the defendant." *D'Angelo*, 398 F. Supp. at 81.

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the said Act of 1897 is not subject to the exceptions contained in the general statute of limitations, Section 123 of the Code"). As noted above, however, those very "exceptions," including Section 8117's tolling provision, are "part and parcel" of the three-year limitations period at issue here. *D'Angelo*, 398 F. Supp. At 80 ("For over 120 years a tolling provision like section 8117 has been part and parcel of the three year statute of limitations").

In short, *Hurwitch* and the other Delaware cases cited by Panico all involve substituted service on non-resident defendants to achieve personal jurisdiction *in Delaware,* thus precluding a finding that the defendant in each of those cases was "outside the state" and "not otherwise subject to service of process in the state" under *Saudi Basic*. PRA agrees with Panico that Section 8117, by its terms, plainly does not toll limitations in such a situation.

But that is not this case. Here, no substituted service was available to render Panico subject to personal jurisdiction in Delaware. A48, ¶¶ 15-16. To the contrary, the parties have jointly stipulated to facts sufficient to show that Panico was at all times "outside the state" and "not otherwise subject to service of process in the state," as Section 8117 requires. A7-8.

Panico appends to the end of his Opening Brief an argument that Stipulation 16 ("Plaintiff has never been subject to personal jurisdiction in Delaware") should be re-written to say "Plaintiff has never been subject to personal jurisdiction *while physically present* in Delaware," thereby allowing for long-arm jurisdiction in Delaware despite the Stipulations to which he agreed. This strained reading of Stipulation 16 was correctly rejected by the District Court, as it would render superfluous Stipulation 12 ("Plaintiff has never lived in Delaware") and Stipulation 13 ("Plaintiff has never visited Delaware"), both of which would have been covered by Panico's revisionist interpretation. *Jazz*

Pharms., Inc. v. Amneal Pharms. LLC, No. 13-391, 2015 U.S. Dist. LEXIS 54706, at *11 (D.N.J. April 22, 2015) ("This Court takes care not to render other portions of a provision or a contract superfluous when construing contract language.") (quoting *Meyer v. CUNA Mut. Ins. Soc'y*, 648 F.3d 154, 167 (3d Cir. 2011)).[8]

In the end, it is little wonder that *Hurwitch* and the other Delaware cases cited by Panico fail to support his argument that Section 8117 applies only when a non-resident defendant is *nowhere* subject to process or jurisdiction. That argument, if correct, proves too much, as it would necessarily mean Section 8117 – a statute on Delaware's books for over 150 years – effectively would be read out of the Delaware Code in its entirety. *Any* defendant – including the defendant in *Saudi Basic* itself – will always be subject to process in *some* forum, absent some disability covered in a different tolling provision. *See, e.g.*, 10 Del. C. § 8116 (savings for infants or persons under disability). Panico's attempt to excise Section

[8] Even if Panico were allowed to side-step his own Stipulation in this manner, the Delaware choice-of-law provision still would be insufficient to confer personal jurisdiction in Delaware as he suggests. *See, e.g., BP Chems. Ltd. v. Formosa Chem. & Fibre Corp.,* 229 F.3d 254, 259 (3d Cir. 2000) (refusing to haul an individual into the jurisdiction of the forum solely as a result of random, contractual provisions), *Herman v. BRP, Inc.*, C.A. No. N13C-11-105, 2015 Del. Super. LEXIS 193, at *11 (Super. Ct. April 13, 2015) (noting "it is well established that a choice of Delaware law provision in a contract is not, of itself, a sufficient transaction of business in the State to confer jurisdiction under § 3104(c)(1)."); *Intellimark, Inc. v. Rowe*, C.A. No. 05C-01-086, 2005 Del. Super. LEXIS 361, at *11 (Super. Ct. Oct. 24, 2005) (noting that a choice of law provision, though dispositive of the substantive law used in the forum court, is generally insufficient to confer jurisdiction on the courts).

8117 from the Delaware Code runs afoul of the well-settled maxim that "a statute ought, upon the whole, to be so construed that, if it can be prevented, no clause, sentence, or word shall be superfluous, void, or insignificant." *Duncan v. Walker*, 533 U.S. 167, 174 (2001). The argument thus was properly rejected by the District Court.

3. Panico's non-Delaware cases rely on a fundamental misreading of *Hurwitch*, and were properly rejected by the District Court.

Like Panico's reliance on Delaware cases, his reliance on cases outside the state is similarly misplaced because all of those cases fundamentally rely on *Hurwitch* and its progeny. Because *Hurwitch* did not apply Section 8117 – and at best stands for the proposition that substituted and personal service are functionally equivalent – the non-Delaware cases cited by Panico suffer from the same flaw as the Delaware cases discussed above in Section 2.

For example, in *McCorriston v. L.W.T., Inc.,* 536 F. Supp. 2d 1268 (M.D. Fla. 2008), the court, relying on *Hurwitch,* found the defendant's proposed construction of Section 8117 "problematic" because it would indefinitely toll lawsuits filed in states other than Delaware. *Id.* at 1276. The same is true with respect to *Portfolio Recovery Associates, LLC v. King,* 901 N.Y.S.2d 575 (2010). Relying on *King,* the District Court for the Eastern District of New York applied the same flawed reasoning in *Diaz v. Portfolio Recovery Associates, LLC,* No. 10 CV 3920, 2012 U.S. Dist. LEXIS 72724, at *8 (E.D.N.Y. May 23, 2012). Yet

none of these cases acknowledged, much less addressed, the fact that *Hurwitch* was not about Section 8117 at all.

The misapplication of *Hurwitch* by the courts in *King* and *McCorriston* fostered the continued misconstruction of Section 8117 in subsequent case law by breeding an entirely new string of cases that reached the same questionable conclusions regarding the application of Section 8117. *See Lehman Bros. Holdings, Inc., v. First Calif. Mortg. Corp.,* No. 13-cv-02113, 2014 U.S. Dist. LEXIS 60573, at *10 (D. Colo. April 30, 2014) (citing to *McCorriston* to support the conclusion that tolling the statute of limitations in perpetuity would lead to an absurd result); *Gaisser v. Portfolio Recovery Associates, LLC,* 571 F. Supp. 2d 1273, 1278 (S.D. Fla. 2008) (citing to *McCorriston* and *Hurwitch* for the proposition that "[o]ther courts considering similar situations have refused to apply tolling statutes such that the limitations period is indefinitely tolled.").

For the same reason, Panico's reliance on *Izquierdo v. Easy Loans Corp.,* No. 2:13-cv-1032, 2014 U.S. Dist. LEXIS 84483 (D. Nev. June 18, 2014), to support his argument against application of Section 8117 is misplaced. In *Izquierdo,* the district court applied the same flawed reading of *Hurwitch* and held that Delaware law "has no tolling effect on the applicable statutes of limitations when the defendant in the suit is subject to personal or other service to compel his appearance." *Id.* at *15 (citing *Hurwitch*). Based on the reasoning in *Hurwitch*

and *McCorriston,* the court reasoned that Section 8117 could only apply to actions that had been or could have been filed in Delaware. *Id.* at *21. The same is true in *Personalized User Model, LLP v. Google, Inc.,* 797 F.3d 1341 (Fed. Cir. 2015), where the court also relied on its misreading of *Hurwitch* to support its holding that Section 8117 did not toll the applicable statute of limitations because the application "would result in the abolition of the defense of statutes of limitation in actions involving non-residents." *Id.* at 1348 (citing *Hurwitch,* 155 A.2d at 593-94); *see also Resurgence Financial, LLC v. Chambers,* 173 Cal. App. 4th Supp. 1, 5, n2. (2009) (noting the result of a literal application of Section 8117).

In each of these cases, the court chose to apply Delaware's statute of limitations, but then ignored the accompanying tolling provision. In each of these cases, the court relied on a misinterpretation of the Delaware Supreme Court's holding in *Hurwitch* to justify its "judicial policymaking." *See Klehr v. A.O. Smith Corp.*, 521 U.S. 179, 200 (1997) ("We find no support in our cases for the practice of borrowing only a portion of an express statute of limitations. Indeed, *such a practice comes close to the type of judicial policymaking that our borrowing doctrine was intended to avoid*.") (emphasis in original) (quotations omitted) (Scalia, J., concurring)). While this repeated misreading of *Hurwitch* allowed these courts to avoid what they viewed as an "absurd" construction of the statute, none of the courts analyzed the underlying nature of the claims in either *Hurwitch*

or *Pawnee Bill*. Had they done so, it would have been apparent that applying *Hurwitch* to the facts in these cases was not appropriate, and the District Court properly rejected their analysis.

B. The District Court Correctly Declined To Rewrite Or Ignore Section 8117 Simply Because It Was Applied In A Foreign Forum.

Section 8117 applies by its terms without regard to forum or contractual choice-of-law, and is not limited to defendants with a prior connection to Delaware.[9] Language limiting the statute to actions filed within the state of Delaware is likewise conspicuously absent. *McCorriston*, 536 F. Supp. 2d at 1276 ("[T]he court notes that § 8117 is not expressly limited to cases filed in Delaware."); *see also CACV*, 274 P.3d at 864 ("Further, the [Delaware] tolling statute does not expressly limit its application to cases filed in Delaware; hence, the tolling statute appears to apply to plaintiff's action and to toll the running of the Delaware statute of limitations."). The District Court thus correctly found no principled basis on which to disregard Section 8117 in this case, and Panico offers none.

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[9] While Section 8117's second sentence applies on its face only to Delaware defendants who subsequently leave the state, its first sentence makes clear that it also applies to "any person" – including Panico – who is "out of the State" at the time the action accrues. No prior connection to Delaware is required, and limitations will begin to run thereafter only "after such person comes into the State in such manner that by reasonable diligence, such person may be served with process." 10 Del. C. § 8117.

Indeed, tolling provisions such as Section 8117 form an integral part of any state's limitations policy, and where a state's limitations period is applied in a foreign jurisdiction by contract, so too must its tolling law be applied. *See Hardin v. Straub,* 490 U.S. 536, 539 (1989) ("In virtually all statutes of limitations the chronological length of the limitation period is interrelated with provisions regarding tolling, revival and questions of application. Courts thus should not unravel state limitations rules unless their full application would defeat the goals of the federal statute at issue.").[10] To do otherwise would be to allow one party "to take advantage of the portions of [the state's] law that are favorable to [it] and ignore the balance," as Panico now seeks to do. *Avery*, 568 F.3d at 1023.

Under *Saudi Basic*, Section 8117 tolls limitations when a defendant is "outside the state" and "not otherwise subject to service of process in the state," the "state" in this case being uniformly interpreted by Delaware courts and others to mean Delaware, not any other state. *See Saudi Basic,* 688 A.2d at 18; *Brossman*, 510 A.2d at 472-73 ("If a defendant is not subject to service [in Delaware] when a cause of action accrues against him, the relevant statute of limitations will be tolled

[10] *See also Avery*, 568 F.3d at 1022 ("[W]hen parties lawfully adopt a state's law for the purposes of resolving disputes arising from an agreement, they adopt that state's statute of limitations provision and tolling provision *in toto*.") (applying analogous New Hampshire tolling provision)); *Smalley v. Staff at DYFS Office,* No. 10-4581, 2011 U.S. Dist. LEXIS 428, at *3 (D.N.J. Jan. 3, 2011) ("[C]ourts should not unravel states' interrelated limitations provisions regarding tolling, revival and questions of application").

until the plaintiff, by reasonable diligence, may serve him with process."). *See also McCorriston*, 536 F. Supp. 2d at 1276 ("Notwithstanding, § 8117 references 'the State,' an obvious reference to Delaware.").

The District Court, applying Delaware's three-year limitations period for PRA's underlying collection action,[11] was likewise bound to apply Delaware's tolling provision *as a Delaware court would* – not to somehow transform Section 8117 into a New Jersey law to suit Panico's purposes. *See Avery*, 568 F.3d at 1023.[12] Finding the parties' Stipulations sufficient to establish that Panico was

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[11] Notably, the weight of authority suggests that New Jersey's six-year limitations period – and not Delaware's shorter three-year period – should have applied to PRA's collection action because New Jersey courts treat limitations as procedural, rather than substantive, and thus unaffected by a contractual choice-of-law provision. *See Mack Trucks,* 372 F.2d at 20 (the statute of limitations is "ordinarily a matter of procedure . . . and is therefore, like other procedural attributes, controlled by the law of the forum rather than the law of the state whose law otherwise governs the cause of action."); *Gatto v. Meridan Med. Assocs., Inc.*, No. 87-5076, 1989 U.S. Dist. LEXIS 1672, at *11-12 (D.N.J. Feb. 9,1989) ("Such clauses generally do not contemplate application to statutes of limitation. Limitations periods are usually considered to be related to judicial administration and thus governed by the rules of local law, even if the substantive law of another jurisdiction applies." (citing RESTATEMENT (SECOND) OF CONFLICT OF LAWS, § 122, comment (a)).

[12] *See also Crowley v. Chait*, No. 85-2441, 2004 U.S. Dist. LEXIS 27238, *68 (D.N.J. August 25, 2004) ("Under New Jersey's choice of law rules, New Jersey's statute of limitations governs unless an exception to that rule applies," noting that, under *Heavner v. Uniroyal, Inc.*, 305 A.2d 412, 417 (N.J. 1973), a foreign state's statute of limitations may only be applied when: (1) the cause of action arises in another state; (2) the parties are all present in and amenable to the jurisdiction of that state; (3) New Jersey has no substantial interest in the matter; (4) the substantive law of the foreign state is to be applied; and (5) the foreign state's limitation period had expired at the time suit was commenced). Here, Panico

"outside the state" of Delaware and "not otherwise subject to service of process in the state" of Delaware, thereby bringing "the case squarely within the plain meaning and ambit of Delaware's tolling provision," the District Court correctly found PRA's collection action timely, warranting summary judgment with respect to Panico's Class Action Complaint. A7, 10.

The Ninth Circuit's decision in *Avery* is particularly instructive. There, the plaintiff was an Oregon debtor whose credit card agreement contained a New Hampshire choice-of-law provision. As Panico himself acknowledges, New Hampshire's limitations and tolling provisions are virtually identical to Delaware's. *See* Opening Brief at 19. *See also Avery*, 568 F.3d at 1022 ("The New Hampshire statute of limitations for an action on a credit card debt is three years. However, this statutory period is tolled if a defendant is absent from and residing out of the state at the time the cause of action accrued.") (citations omitted). Oregon's applicable limitations period – like New Jersey's – is six years.

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arguably meets only one of the five *Heavner* factors (foreign substantive law applies), and has stipulated away the presence in and amenability to jurisdiction in Delaware *Heavner* requires. New Jersey's six-year period thus controls, rendering PRA's collection action timely as a matter of law and providing an alternate basis to affirm the District Court's granting of summary judgment in PRA's favor. *Marx,* 32 Fed. App'x at 648 ("However, we may affirm the summary judgment decision of the District Court if it could have been reached on any ground below, including grounds rejected or not reached by the District Court."). Two cases cited by Panico, *Warriner v. Stanton*, 475 F.3d 497 (3d Cir. 2007) and *O'Keefe v. Snyder*, 416 A.2d 862 (N.J. 1980), are not to the contrary. Neither involved a contractual choice-of-law provision, and both simply applied the same *Heavner* factors which mandate New Jersey law in this matter.

Id. at 1023 ("The applicable Oregon statute of limitations for contractual claims is six years, and the action against Avery was filed within six years.") (citations omitted).

Like Panico, the plaintiff in *Avery* sought to take advantage of the chosen state's limitations period but to ignore its tolling provision. Specifically, she argued that "the state" referred to in the New Hampshire tolling statute should be interpreted by the district court sitting in Oregon to mean "the forum state, in this case Oregon, and not New Hampshire." *Avery*, 568 F.3d at 1022. The Ninth Circuit rejected this argument, finding that:

> when parties lawfully adopt a state's law for purposes of resolving disputes arising from an agreement, they adopt that state's statute of limitations provision and tolling provision *in toto*. Avery agreed to abide by New Hampshire's statute of limitations as well as its tolling provisions, which have consistently been interpreted by New Hampshire courts to apply when defendants are absent from New Hampshire, not from any other state. *Id*.

Further finding that "[b]ecause Avery [an Oregon resident] was absent from New Hampshire at all relevant times, the statute of limitations on the claim against her was tolled under New Hampshire law and had not run by the time the Attorneys brought suit against her in Oregon," the Ninth Circuit held the district court "did not err in granting summary judgment to the Attorneys on the claim that

they had violated the FDCPA by attempting to collect on a time-barred debt." *Id.* at 1023. The same holds true with respect to Panico.[13]

Nor did the District Court err in declining to unravel Delaware's limitations law – and read Section 8117 out of the Delaware Code entirely – simply because it was applied in a foreign forum. Panico's suggestion to the contrary notwithstanding, Opening Brief at 17, contractual choice-of-law provisions have long been recognized in Delaware, *see, e.g., Wilmington Trust Co. v. Wilmington Trust Co.*, 24 A.2d 309, 313 (Del. 1942) ("Contracting parties, within definite limits, have some right of choice in the selection of the jurisdiction under whose

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[13] Although Oregon has adopted the Uniform Conflict of Laws - Limitations Act ("UCLLA") while New Jersey remains a Second Restatement jurisdiction, this is a distinction without a difference for purposes of this appeal. *See* RESTATEMENT (SECOND) OF CONFLICT OF LAWS, § 142 comment (f) ("The majority rule is that the forum will apply the tolling provision of the state referred to by its borrowing statute."); UCLLA § 3 ("If the statute of limitations of another state applies to the assertion of a claim in this State, the other state's relevant statutes and other rules of law governing tolling and accrual apply in computing the limitation period"). Both regimes likewise permit the forum court to disregard a choice-of-law provision offensive to its public policy. *See* RESTATEMENT (SECOND) OF CONFLICTS OF LAWS, § 187(2) ("The law of the state chosen by the parties to govern their contractual rights and duties will be applied [unless] . . . application of the law of the chosen state would be contrary to a fundamental policy"); UCLLA § 4 ("If the court determines that the limitation period of another state . . . is substantially different from the limitation period of this state and has not afforded a fair opportunity to sue upon, or imposes an unfair burden in defending against the claim, the limitation period of this state applies."). The only real difference between the two is that, unlike states adopting the UCLLA, Second Restatement jurisdictions such as New Jersey typically treat limitations as procedural, thereby applying the law of the forum state, a difference weighing here in favor of affirmance. *See* footnote 11, *supra*.

law their contract is to be governed."), and Delaware's legislature is presumed to have been aware of their existence and application each time it passed a new version of Section 8117. *See Giuricich v. Emtrol Corp.*, 449 A.2d 232, 239 n.13 (Del. 1982) ("A Legislature is presumed to be aware of existing law."); *McCoy v. State*, 36 A. 81, 86 (Del. 1897).

In the century and a half since Section 8117 was first enacted, the Delaware General Assembly could easily have limited the statute to cases filed in Delaware – or otherwise restricted its application where a choice-of-law provision is involved – but it has chosen not to do so. This speaks volumes. *Pawnee Bill*, 66 A. at 474 ("Where the Legislature has made no exception to positive terms of a statute, the presumption is that it intended to make none, and it is not the province of the Court to do so."). Whether implementing such a change in the future makes for sound legislative policy is not for PRA here to say, but it can plainly be stated that such a decision is properly one of legislative – not judicial – policy, as it violates the cardinal rules of statutory construction. *Id.*

C. Sound Judicial Policy Mandates The Application Of Section 8117 According To Its Terms.

While the future modification or amendment of Section 8117 is a question properly left to the Delaware General Assembly, its application in this case falls squarely within this Court's purview, and a decision in PRA's favor is mandated by sound judicial policy. This Court has expressed a strong judicial interest in

establishing clear rules to preserve a "stable and predictable environment for contracting parties *ex ante*," particularly where choice-of-law issues arise. *See NL Indus. v. Commercial Union Ins. Co.*, 65 F.3d 314, 326 (3d Cir. 1995) ("The consistency and predictability which emanate from a clear rule foster commerce and harmonious interstate relations by reducing the uncertainty associated with entering into commercial transactions."); *see also Berg Chilling Sys. v. Hull Corp.*, 435 F.3d 455, 466 (3d Cir. 2006) ("In a strict Restatement analysis, we would be guided towards giving effect to the contractual choice of law by considerations such as protecting the parties' justified expectations and assuring certainty, predictability and uniformity of results.") (citing RESTATEMENT (SECOND) OF CONFLICTS OF LAWS, § 6(2)(d) & (f)).

The issue before this Court presents a clear question that demands a clear answer. Does Delaware law apply to PRA's underlying collection action against Panico? If it does, then it must be applied "*in toto*." *Avery*, 568 F.3d at 1022. The selective, à-la-carte application of Delaware law which Panico now proposes – a "suggested gloss" plainly intended "to take advantage of the portions of [Delaware] law that are favorable to [him] and ignore the balance," *id.* at 1023 – could not possibly be predicted by the parties in advance with any degree of certainty, and must be rejected.

Nor does following these sound principles of judicial policy work any hardship on Panico. As a New Jersey resident sued on a delinquent credit-card debt in New Jersey, he could reasonably have expected to be sued on that debt within New Jersey's six-year limitation period. N.J. Rev. Stat. § 2A:14-1.[14] To avoid that result, Panico has instead relied on Delaware law, specifically its three-year limitations period, to escape extensive credit card debt and to initiate an FDCPA class action claim against PRA. Requiring him now to abide by the rest of Delaware law can hardly be characterized as hardship.

Nonetheless, Panico repeats his complaint that, because applying Section 8117 in his case would yield a potentially indefinite period for a lawsuit under Delaware law, it should be rejected as "absurd." But that is *precisely* what Section 8117 does. Indeed, the plain language of the statute tolls the limitation period indefinitely so long as the defendant is "out of the State," providing further that any applicable limitations period will begin to run only after such time as the "person comes into the State in such manner that by reasonable diligence, such person may be served with process." 10 Del. C. § 8117. By its terms, this tolling period may be brief, or it may last indefinitely. In *Saudi Basic*, the limitations

[14] Indeed, as noted in footnote 11, *supra*, New Jersey's six-year period should arguably be applied in this case, rendering PRA's collection action timely – and Panico's claims defective – as a matter of law.

period was tolled for over a decade. 866 A.2d at 18-19.[15] Clearly, the Delaware Supreme Court did not consider Section 8117's indefinite tolling period to yield an absurd result.

Even if the indefinite tolling that necessarily follows from a principled application of Delaware law were deemed absurd or unconscionable, the appropriate remedy lies not in the *unprincipled* application of only those parts of Delaware law favorable to Panico's claims. Rather, it is found in the principled application of the forum state's laws, in this case New Jersey's. *See* RESTATEMENT (SECOND) OF CONFLICTS OF LAWS, § 187(2), which states that:

> The law of the state chosen by the parties to govern their contractual rights and duties will be applied [unless] . . . application of the law of the chosen state would be contrary to a fundamental policy of a state which has a materially greater interest than the chosen state in the determination of the particular issues and which, under the rule of § 188, would be *the state of the applicable law in the absence of an effective choice of law by the parties*. (emphasis added)[16]

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[15] *See also Brossman*, 510 A.2d at 472-73 (statute of limitations tolled indefinitely until the effective date of the Delaware long-arm statute because prior to that time the nonresident defendant was not amendable to service of process).

[16] As Panico correctly notes, New Jersey follows this Second Restatement approach, which mandates its own six-year period in the event a New Jersey court finds Delaware's tolled limitations period is "contrary to a fundamental policy" of New Jersey. Opening Brief at 26. *See also Instructional Sys., Inc. v. Computer Curriculum Corp.* 614 A.2d 124, 133 (N.J. 1992) ("Ordinarily, when parties to a contract have agreed to be governed by the laws of a particular state, New Jersey courts will uphold the contractual choice if it does not violate New Jersey's public policy."); *Kramer v. Ciba-Geigy Corp.*, 854 A.2d 948 (N.J. App. Div. 2004) (same).

Because applying New Jersey's six-year limitations period would defeat his claim, however, Panico makes no such principled policy argument here. Instead, he rests on a purely emotional plea that Section 8117 cannot possibly mean what it says, or countless delinquent debtors outside Delaware might find themselves subject to potentially unlimited collection actions. Ignoring for the moment that a foreign court may generally refuse enforcement of those laws it finds unconscionable, *see Instructional Sys.,* 614 A.2d at 133 – and forgetting that allowing delinquent debtors such as Panico to mix and match applicable law to escape liability will ultimately impose costs not just on creditors, but also on the millions of debtors who have not reneged on their obligations – such a plea merits no judicial intervention where, as here, the legislature has spoken:

> In such a case argument from the reason, spirit, or purpose of the legislation, from the mischief it was intended to remedy, from history or analogy for the purpose of searching out and justifying the interpolation into the statute of new terms, and for the accomplishment of purposes which the law making power did not express, are worse than futile. They serve only to raise doubt and uncertainty where none ought to exist, to confuse and mislead the judgment, and to pervert the statute.

Pawnee Bill's, 66 A. at 473.[17]

There are only two sound answers here. Either Delaware law applies in its entirety, in which case Delaware's three-year limitations period was properly

[17] *See also In re Visteon*, 612 F.3d at 219 ("The words of a statute are not to be lightly jettisoned by courts looking to impose their own logic on a statutory scheme.").

tolled, or New Jersey law applies, in which case New Jersey's six-year limitations period controls. Either way, PRA was entitled to summary judgment with respect to Panico's claims below and the District Court correctly dismissed those claims. A47, ¶ 2. This Court should affirm the judgment of the District Court below in either instance.

VIII. CONCLUSION

For the foregoing reasons, PRA respectfully asks that the Court affirm the decision of the District Court to grant summary judgment in favor of PRA.

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COMBINED CERTIFICATIONS

Bar Membership (LAR 28.3(d))

David N. Anthony, Stephen C. Piepgrass, Cindy D. Hanson, and James K. Trefil are members of the bar of this Court.

Word Count and Typeface

This brief complies with the type-volume limitation of Fed. R. App. P 32(a)(7)(B) because it contains 8,908 words, excluding the parts of the brief exempted by Fed. R. App. P 32(a)(7)(B)(iii). This brief complies with the typeface requirements of Fed. R. App. P 32(a)(5) and the type style requirements of Fed. R. App. P 32(a)(6) because it has been prepared in a proportionally spaced typeface using Microsoft Word in 14-point Times New Roman type.

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On January 11, 2017, seven (7) hard copies of the Brief of Defendant-Appellee Portfolio Recovery Associates, LLC were filed, via UPS Next Day Air, with the Clerk's Office, and a true and accurate copy of the Brief was filed and served upon the following via the Court's CM/ECF system:

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