SUPERIOR COURT OF THE DISTRICT OF COLUMBIA
CIVIL DIVISION

DISTRICT OF COLUMBIA, **Plaintiff,** **v.** **58th PRESIDENTIAL INAUGURAL COMMITTEE et al.,** **Defendants.**	**Civil Action No.: 2020 CA 000488 B** **Judge José M. López**

OMNIBUS ORDER

Before the Court are four motions for summary judgment, one filed by each of the parties in this case. The Plaintiff, the District of Columbia ("the District"), argues that there is no genuine dispute of material fact regarding its waste and private inurement claims and that the Court should grant it judgment as a matter of law. Defendant Trump Organization LLC ("Trump Organization") requests summary judgment on the grounds that maintaining jurisdiction over it violates the Due Process Clause of the Fifth Amendment to the United States Constitution. In the alternative, and along with its Co-Defendants Trump International Hotel d/b/a/ Trump International Hotel Washington, D.C. ("Trump Hotel"), and 58th Presidential Inaugural Committee ("PIC"), the Trump Organization also moves for summary judgment on the merits of the Plaintiff's claims.

Upon consideration of the relevant law, and the entire record, the Court grants the Defendant Trump Organization's Motion for Summary Judgment on personal jurisdiction grounds. Further, the Court finds that, while the Defendants are entitled to summary judgment on the District's waste claim, the Plaintiff has raised a genuine dispute of material fact regarding its private inurement claim. Accordingly, the Defendants' motions are hereby granted in part and denied in part. The Plaintiff's motion is denied in full.

I. BACKGROUND

This case stems from the events surrounding the 2017 Presidential Inauguration. Following the election of Donald Trump as president, tens of thousands flocked to Washington to share in the experience, watch the ceremony, and to glad-hand the people who were about to become fixtures in the government of a new administration. To accommodate the events of that day, a non-profit organization was formed, the PIC.[1] *See* Plaintiff's Statement of Undisputed Material Facts ("PSOF") at ¶ 2. Following the 2016 election, President-Elect Trump asked Mr. Thomas Barrack, a close personal friend, to serve as the chairman of the PIC and to prepare the events for the coming inauguration. *See* PICSOF ¶ 14; *see also* PSOF ¶ 15.

Mr. Barrack went right to work and assembled a team of planners which included Mr. Rick Gates, a former Trump Campaign official, as the deputy chairman. *See* PSOF ¶ 2. Mr. Barrack also hired Ms. Stephanie Wolkoff, an event planner with extensive experience in New York City but less so in the District of Columbia. *See* Defendants Old Post Office LLC D/B/A/ Trump International Hotel Washington, D.C. and Trump Organization LLC's Statement of Undisputed Material Facts ("DTSOF") ¶¶ 99–106. Within a few weeks, the PIC team had identified several locations in the District where they could hold inauguration events, one of which was the Trump Hotel located on Pennsylvania Avenue. *See* PSOF ¶ 53.

When PIC officials approached the management of the Trump Hotel about renting out its space for four days, Trump Hotel officials originally quoted them at $3.6 Million. *See* PICSOF ¶¶

[1] The stated purpose of the PIC is "to further the common good and general welfare of the citizens of the United States of America by supporting the activities surrounding the 2017 Presidential inauguration." Defendant PIC's Statement of Undisputed Material Facts ("PICSOF") ¶ 5.

105–08. The PIC staffers immediately flagged this number as being very high. *Id.* at 110. Following this quote, Mr. Gates contacted Ms. Ivanka Trump and asked her via email for assistance in negotiating the price of the hotel rental space. *See Id.* Ms. Trump, a stakeholder in the Trump Hotel and an Officer in the Trump Organization, reached out to Mikael Damelincourt, the Hotel General Manager, and asked him to negotiate the transaction at "fair market price." *See* DTSOF ¶¶ 12, 78. After some more negotiation, including an in-person meeting between Mr. Damelincourt and Mr. Gates, the Trump Hotel and the PIC settled on a final price of $175,000 over a four-day span, totaling $700,000. *Id.* ¶ 92.

When this number was presented to Ms. Wolkoff at the PIC, she again objected that it was too high of a price to pay. *See id.* at ¶ 97. She further opined that the maximum value for the rental should be $85,000. *Id.* Ms. Wolkoff expressed concern that, because of the PIC's tax-exempt status, the underwritten costs of the PIC's dealings would become public knowledge. *See* PSOF ¶ 52. Further, Ms. Wolkoff indicated that she had received other offers from venues, such as the National Gallery of Art, which would allow the PIC to use their spaces free of charge. *Id.* at ¶¶ 52–53. Regardless, Ms. Wolkoff's objections were overruled, and on January 10, 2017, the PIC and the Trump Hotel entered into a contract for the use of Trump Hotel spaces from January 17th through January 20th. *Id.* at ¶ 57.

At the same time, another non-profit organization, the Presidential Inaugural Prayer Breakfast ("Prayer Breakfast"), was seeking to reserve the Trump Hotel's Presidential Ballroom (its largest space) on the morning of the inauguration. *See* PICSOF ¶ 95. Prayer Breakfast successfully executed a contract with the Trump Hotel for the morning of the inauguration totaling $5,000 for use of the space, as well as requiring a $39,000 minimum for food and beverage. *See* PICSOF ¶ 99. This resulted in some of the space at the Trump Hotel being double booked. *See*

PSOF ¶ 60. Despite this double booking, the PIC did not receive a discount for the use of its space on that day. *Id.* ¶¶ 60–62.

While the PIC was looking at the use of spaces for inauguration events, other members of the Trump Organization "orbit" were searching for accommodations during the week in question. Mr. Gentry Beach, a close personal friend to Donald Trump Jr., and a co-finance chair at the PIC, found and reserved a block of rooms at the Loews Madison Hotel. *See* PSOF ¶ 94. At the time that they reserved the block of rooms, Mr. Beach listed the Trump Organization LLC headquarters in New York City as the appropriate billing address. *See* PSOF ¶ 95. Mr. Beach also listed Ms. Lindsay Santoro, then personal assistant to Mr. Donald Trump Jr., as the point of contact, and he signed on behalf of the Trump Organization LLC. *See* PSOF ¶ 96; *see also* PICSOF ¶ 172–73.

The week of the Inauguration, the PIC used the Trump Hotel space as contracted, from January 17th through January 20th. *See* PICSOF ¶ 121. How the PIC used the space is somewhat in dispute and in many ways it is at the heart of this litigation. The record demonstrates that for much of the time that the spaces were rented, they were used mainly for reception-like activities. *Compare id.* ¶¶ 153–58 (describing the use of the facilities as "inaugural balls") *with* PSOF ¶ 70 (characterizing the activities as "a party for [Trump Jr.] and his selected guests"). The PIC paid for food and drink and many guests attended a variety of greetings ceremonies coordinated by the PIC. *See* PICSOF ¶¶ 162–68. However, Mr. Gates stated in an email to Ms. Trump that he did not expect the president-elect to attend one of the events, and that it "was really for [the Trump Children]." *See* PSOF ¶ 68.

After the inauguration week, the Loews Madison hotel forwarded an invoice to the Trump Organization LLC in New York City demanding payment for the room block that Mr. Beach had reserved. PICSOF ¶ 179. The Trump Organization refused to pay for the room block. PSOF ¶

98. The Loews Madison hotel referred the room block to a collections agency, which the PIC eventually satisfied. *Id.* At ¶ 109. On January 22nd, 2020, the District of Columbia filed this suit alleging waste of non-profit funds and of private inurement in violation of the PIC's tax-exempt status. After surviving the motion to dismiss stage, all parties have spent the better part of a year in discovery. By consent motion, the Court has stayed all pending motions anticipating a ruling on the dispositive motions for summary judgment that the Court will now address.

II. STANDARD OF REVIEW

Summary judgment is appropriate only when "there is no genuine dispute of material fact and the moving party is entitled to judgment as a matter of law." *See* D.C. Super. Ct. R. Civ. P. 56(a); *Perkins v. District of Columbia*, 146 A.3d 80, 84 (D.C. 2016). A material fact is one which, under the applicable substantive law, is relevant and may affect the outcome of the case. *See Allen v. Hill*, 626 A.2d 875, 877 (D.C. 1993). In considering a motion for summary judgment, the court must view the evidence "in the light most favorable to the nonmoving party, who is entitled to all favorable inferences which may be reasonably drawn from the evidentiary materials." *Phelan v. City of Mt. Rainier*, 805 A.2d 930, 936 (D.C. 2002). The burden is on the movant to demonstrate that there is no dispute of material fact and that summary judgment is appropriate. *See Holland v. Hannan*, 456 A.2d 807, 815 (D.C. Ct. App. 1983). The Court "may not resolve issues of fact or weigh evidence at the summary judgment stage." *Fry v. Diamond Constr., Inc.*, 659 A.2d 241, 245 (D.C. 1995).

III. ANALYSIS

A. Personal Jurisdiction

At the outset of any legal claim, a court must always determine if it has jurisdiction over the claim itself.[2] Personal jurisdiction, sometimes called *in personam* jurisdiction, is simply an inquiry into whether *this* court system has the power to adjudicate claims against *this* defendant. *See generally Pennoyer v. Neff*, 95. U.S. 714 (1878); *see also Bristol-Myers Squibb Co. v. Superior Court*, 137 S. Ct. 1773, 1779 (2017) (noting the long history of personal jurisdiction jurisprudence). Every personal jurisdiction inquiry calls back to a familiar two-part refrain. First, the Court must determine if the defendant's activities are subject to the forum state's long arm statute.[3] *See Hess v. Pawloski*, 274 U.S. 352, 356 (U.S. 1927). Second, if the defendant's activities fall within one of the statute's enumerated activities, then the Court must determine whether the exercise of jurisdiction comports with the Due Process clause of the Fifth Amendment. *See World-Wide Volkswagen Corp. v. Woodson*, 444 U.S. 286, 291 (1980).

In this case, the governing long arm statute is D.C. Code § 13-423. The only provision of this statute that any of the parties have advanced supports jurisdiction is subsection (a)(1), which allows the District to maintain personal jurisdiction over defendants who are "transacting any business" within D.C. *See* D.C. Code § 13-423(a)(1). The activities at issue in this case plainly fall within the general umbrella of "transacting business." *See Fisher v. Bander*, 519 A.2d 162, 163 (D.C. 1986) (acknowledging that forming a contract in the District fell within the "transacting

[2] "Jurisdiction is the power to declare the law, and when it ceases to exist, the only function remaining to the court is that of announcing the fact and dismissing the cause." *Ex parte McCardle*, 74 U.S. 506, 514 (1869).

[3] The term "State" here is obviously a bit of a misnomer. However, in a personal jurisdiction analysis in the District of Columbia, the Fifth Amendment analysis is identical to the typical Fourteenth Amendment analysis. *See Fisher v. Bander*, 519 A.2d 162 (D.C. 1986).

business subsection of the statute"). Accordingly, the Court will focus primarily on the Due Process considerations of this case.

i. Legal Standards for Personal Jurisdiction and Agency

Due process allows for two over-arching theories of jurisdiction: "specific jurisdiction" and "general jurisdiction."[4] *See Int'l Shoe Co. v. Washington*, 326 U.S. 310, 318 (1945); *see also Goodyear Dunlop Tires Operations, S.A. v. Brown*, 564 U.S. 915, 919–920 (2011) (describing the differences between the two analyses). In a specific jurisdiction case, the primary inquiry is whether the defendant has sufficient "minimum contacts" with the forum such that the exercise of jurisdiction would not offend "the traditional notions of fair play and substantial justice." *See id.* at 316 (internal quotations omitted). The Supreme Court has instructed that one of the primary inquiries in a minimum contacts analysis is whether the party has "purposefully availed" itself of the laws and protections of the forum state by directing its activities to that forum. *See Burger King Corp. v. Rudzewicz*, 471 U.S. 462, 475 (1985).

Although "purposeful availment" does not always come with readily identifiable markers that allow a court to make an easy determination, over the years courts have parsed out what types of activities are "directed at the forum state" and what types are not. For example, in 1985 the Supreme Court held in *World-Wide Volkswagen* that the mere existence of a product inside of a forum state was not enough to establish jurisdiction over the company that produced it. *See World-Wide Volkswagen*, 444 U.S. at 297–98. In so doing, the Supreme Court rejected the "stream of commerce" theory that suggested by placing a product in the flow path of a foreign forum, a

[4] No party seriously contends that general jurisdiction is applicable to this case.

defendant was subject to the jurisdictional arm of that forum. *Id.* Furthermore, activities such as executing even a single contract can support a finding of purposeful availment. In *Burger King*, the Supreme Court held that a contract represents an "intermediate step" between the business negotiations and the business outcomes that happen when parties make deals. *See Burger King*, 471 U.S at 478. The substance, rather than the existence, of a contact is determinative of a finding of jurisdiction. *See id.* The Defendant in Burger King, despite signing only one contract, agreed to be bound by the laws of the state of Florida, and the Court found jurisdiction was appropriate. *See id.* at 479–80. Finally, the Supreme Court has made abundantly clear that the unilateral actions of a third party cannot bind a defendant to a contract and subject them to personal jurisdiction *in abstentia*. *See Helicopteros Nacionales de Colombia, S.A. v. Hall*, 466 U.S. 408, 417 (1984) (rejecting personal jurisdiction based on the actions of a third party that were beyond the control of the defendant corporation).

Case law in the District follows a similar pattern. For example, in *Helmer v. Doletskaya*, the court rejected personal jurisdiction even though the defendant was party to two contracts that were disputedly related to his contacts in the District. 290 F. Supp. 2d 61, 67 (D.D.C. 2003). The court looked to the substance of both deals and found that, because they were not related to business interests in Washington, D.C., it could not maintain jurisdiction over the defendant Doletskaya. *Id.* at 68. However, a single contract for services in the District will also support the requisite minimum contacts when a party actually renders those services. For example, in *Fisher v. Bander*, the D.C. Court of Appeals held that even a single contract between a law firm in the District and a client in North Carolina would subject that client to the personal jurisdiction of the District if the parties executed the contract. 519 A.2d 162, 164 (D.C. 1986).

Of equal importance in the personal jurisdiction context, especially regarding corporate defendants, is the extent to which the agent of a party may contract on behalf of that party and subsequently subject it to the jurisdiction of another forum. It is settled law that an agent who validly contracts on behalf of a principal company will bind that company to the terms of the contract and subject it to the enforcement mechanisms of the forum jurisdiction. *See* Restatement (Second) of Agency § 140. In order for an agent to subject its principal to the jurisdiction of a court, a plaintiff must first demonstrate that an agent-principal relationship actually exists. *See Jackson v. Loews Washington Cinemas, Inc.*, 944 A.2d 1088, 1097 (D.C. 2008). D.C. Courts have a two-part test in deciding whether the agent-principal relationship exists: 1) the court must find evidence of the parties' consent to establish such a relationship; and 2) the court must find evidence that the activities of the agent are subject to the control of the principal. *See Henderson v. Charles E. Smith Mgmt., Inc.*, 597 A.2d 59, 62 (D.C. 1989). Whether the parties formed an agency relationship is a question of fact. *See id.*

ii. Personal Jurisdiction Over the Trump Organization, LLC

The Plaintiff has proffered two main arguments in support of its claim asserting that this Court has jurisdiction over the Trump Organization. First, the District advances that by allegedly entering into a contract with the Loews Madison Hotel, the Defendant's activities are sufficient to meet both the statutory and constitutional requirements of personal jurisdiction. *See* District of Columbia's Opposition to Defendant Trump Organization's Opposed Motion for Summary Judgment ("PDTOPP") at 3. Second, the District argues that a series of emails between Ms. Ivanka Trump, the Trump Hotel's General Manager Mr. Mickael Damelincourt, and Acting Deputy

Chairman of the PIC Mr. Rick Gates are also sufficient to satisfy the minimum contacts requirement. *See* PDTOPP at 4.

The Court agrees with the Defendants that the existence of emails between Ms. Trump, Mr. Gates, and the Trump Hotel staff are not, in and of themselves, sufficient to warrant a finding of personal jurisdiction. The emails in question that have been supplied on the record amount to little more than a reference from one person to another. Defendant is correct that maintaining jurisdiction based solely on a set of emails would turn the minimum contacts theory on its head. *See* Defendant Trump Organization LLC's Reply in Support of Opposed Motion for Summary Judgment ("DTOREP") at 1. Although the existence of the emails in this case can *support* a finding of jurisdiction, three emails which do so little to demonstrate a desire to conduct business within the District simply do not constitute purposeful availment, and the Plaintiff has not presented any meaningful authority to the contrary. Accordingly, the due process question of this case hinges entirely on whether the contract with the Loews Madison Hotel can validly bind the Trump Organization and subject it to the District's jurisdictional reach.

The Trump Organization does not dispute that a single contract is sufficient to bring it within the purview of the District's statute. Nor does it attempt to refute that executing a contract in the District would be sufficient grounds for jurisdiction under a minimum contacts analysis. Rather, the Trump Organization argues that it was not the one contracting with the Loews Madison Hotel at all. *See* DTOREP at 2. The Trump Organization asserts that Mr. Beach, when he signed the contract at the Loews Madison Hotel for the room block, did not have the authority to authorize such a transaction. *Id.* The Trump Organization has placed significant reliance on the distinctions between corporate formalities that separate a parent organization from any subsidiaries or other

related corporations. *Id.* As for the fact that the Trump Organization is the listed entity on the contract itself, the Defendant's reply is that "[m]istakes happen." *Id.*

The facts on the record indicate that Ms. Santoro was, at the time that Mr. Beach signed the contract, an assistant to Mr. Trump Jr. *See* PDTOPP at 3. Whether Mr. Trump Jr. is actually an officer of the Trump Organization is somewhat unclear, and it is not something that the District has alleged in their filings. However, the Trump Organization does agree that Mr. Trump Jr. at least "asserts some level of control over the Trump Organization." *See* Defendant Trump Organization and Trump Hotel's Reply Statement of Facts ("DRSOF") ¶13. For the purposes of this analysis, especially when viewed in the light most favorable to the District, the Court will assume without deciding that Mr. Trump Jr. is an officer of the Trump Organization. The Trump Organization fully concedes that Mr. Beach was a close friend of Mr. Trump Jr. when he signed that contract, that the Loews Madison contract originally listed the Trump Organization, LLC as the signatory, and that Mr. Beach listed Ms. Santoro as the primary point of contact with an address of 725 Fifth Avenue, New York, NY. *See* DRSOF ¶ 96.

However, even when viewed in the light most favorable to the District, the Court agrees that the Defendant Trump Organizations arguments must prevail. Regardless of whether the Trump Organization was listed on the contract for the Loews Madison hotel, a third party such as Mr. Beach may not bind another party to that contract (and subject them to personal jurisdiction) unless that party is acting with actual or apparent authority. *See Henderson*, 597 A.2d at 62. The record as it exists indicates that Mr. Beach was not a member of the Trump Organization. *See* DRSOF ¶ 96. He certainly has some personal and professional connections to it, but simply "having a connection" to a defendant in a lawsuit is not sufficient to subject them to the jurisdiction of a foreign court.

There is no evidence even suggesting that a member of the Trump Organization, like Ivanka Trump or Donald Trump Jr., actually authorized Mr. Beach to negotiate such a contract. If either Mr. Beach, or potentially Ms. Santoro, was acting with apparent authority, such evidence does not appear on this record, nor does the District meaningfully pursue that argument. Of particular persuasiveness is, as the Defendant pointed out in its reply, that the District has failed to obtain any discovery from Mr. Beach or Ms. Santoro that establishes the requisite direction from the Trump Organization. *See* DTOREP at 2. The District has proffered evidence that would give rise to suspicions of such commands. However, the law requires more. It obligates the Plaintiff to show consent and control. Such indications are simply lacking.

Accordingly, the Court finds that it does not have personal jurisdiction over Defendant Trump Organization. Defendant is entitled to judgment as a matter of law.

B. WASTE

i. Legal Standards of Corporate Waste

Next the Court turns to the District's waste claim. Waste claims seek to hold corporate defendants accountable for diverting assets to "improper and unnecessary purposes." Simply put, the law does not allow for the clear and blatant misuse of funds by a corporation. *See generally White v. Panic*, 783 A.2d 543 (Del. 2001). Of course, one of the biggest difficulties of all in a waste claim is deciding what constitutes a "misuse of funds."[5]

At the outset, the Court notes that waste claims are especially difficult to prove. The standard for a waste claim requires that the defendant "exchange [] corporate assets for

[5] One person's proverbial trash is another's proverbial treasure.

consideration so disproportionately small as to lie beyond the range at which a reasonable person might be willing to trade," and the exchange must be "egregious or irrational." *See Daley v. Alpha Kappa Alpha Sorority, Inc.*, 26 A.3d 723, 730 (D.C. 2011). It is not sufficient for a plaintiff to demonstrate that the defendant made a bad call or even that they were negligent. Rather, "[t]he decision must go so far beyond the bounds of reasonable business judgment that its only explanation is bad faith." *Stanziale v. Nachtomi (In re Tower Air, Inc.)*, 416 F.3d 229, 238 (3d. Cir. 2005). Normally, if a corporate defendant can show that they received "any substantial consideration" as their part of the deal, then a court will find in favor of that defendant. *See Brehm v. Eisner*, 746 A.2d 244, 263 (Del. Ch. 2000).

ii. The District of Columbia's Waste Claim

The arguments of each defendant, although they take the law with their own unique spin, can be housed under the same general thrust. Defendants argue that for the District's waste and inurement claims to succeed, the government must demonstrate that the payment of expenditures was unreasonable. Defendant Trump Hotel's Memorandum of Law in Support of Opposed Motion for Summary Judgment ("DTHMSJ") at 4. The Defendants take the position that the term "reasonable" is synonymous with "fair market value."[6] *See id.* Further, Defendants seek shelter under the "Business Judgment Rule" which protects company board members if they can demonstrate that their actions were taken in good faith and for the benefit of the company. *See*

[6] Not only is this argument directly contradicted by the authority that Defendants cite, *see Sastry v. Coale*, 585 A.2d 1324, 1329 (D.C. 1991) ("there are several available measures of reasonable value"), but it defies reason. If the PIC had irrationally used its funds to reconstruct the Colossus of Rhodes in honor of the then president-elect, then a waste claim would almost surely lie even if the PIC paid fair market value for the materials.

Memorandum of Law in Support of Defendant PIC's Opposed Motion for Summary Judgment ("PICMSJ") at 10.

The Plaintiff avers that no such correlation need to exist. Rather, the District argues that fair market value is a helpful, but not dispositive, factor in determining if payments made by a non-profit were unreasonable. *See* the District's Combined Opposition to Defendants PIC and Trump Hotel's Opposed Motions for Summary Judgment ("PCOPP") at 8–9. On its waste claim, the Plaintiff argues that the Defendants used PIC funds for improper and unnecessary purposes. *See* Plaintiff District of Columbia's Opposed Motion for Summary Judgment and Combined Memorandum in Support ("PMSJ") at 7. Specifically, the District argues that by using its non-profit funds to pay for a hotel while other free venues were available, the PIC violated its common law duty to use its funds in pursuit of its stated non-profit purpose. *See id.* at 7–8. Plaintiff further argues that the Business Judgment Rule is inapplicable in a non-profit corporation. *See* the District's Consolidated Reply to Defendants' Oppositions to the District's Motion for Summary Judgment ("PCREP") at 1–2.

The Court agrees with the Defendants that the Business Judgment Rule is not completely inapposite to the waste considerations in this case. Although the District has cited to some persuasive authority that suggests the purpose behind the Business Judgment Rule does not apply to actions taken by the Attorney General, there is no binding authority on this issue. *See* PCREP at 1. Regardless of the applicability of that rule, the Court is still obligated to look at the "business judgment" that the PIC exercised when it made the transactions in question in this case. *See Saxe v. Brady*, 184 A.2d 602, 610 (Del. Ch. 1962) ("if it can be said that ordinary businessmen might differ on the sufficiency of the terms, then the court must validate the transaction."). Inquiring

into the PIC's "business judgment" bears directly on whether the PIC acted "egregiously or irrationally."

The Court finds that the Plaintiff claims for waste at the Trump Hotel cannot survive summary judgment. The evidence on the record demonstrates that the PIC paid approximately $700,000 for the use of the Trump Hotel space. DTSOF ¶ 92. The record further shows that other parties, such as Prayer Breakfast, paid less money for use of the same space at roughly the same time, and that the PIC also had access to other venues at little to no cost. *See* PICSOF ¶ 99; PSOF ¶¶ 52–53. Such facts certainly tend to cut against the PIC's defenses. However, as the Defendants have correctly pointed out, this Court must consider all of the factors surrounding the selection of the Trump Hotel as the PIC's venue. Considerations such as size, aesthetic, as well as popularity with the president-elect's supporters, all become factors that weigh heavily against the District's claims. *See* Defendant PIC's Opposition to Plaintiff District of Columbia's Opposed Motion for Summary Judgment ("PICOPP") at 7–8. Even if the price the PIC paid was higher than other venues were charging, the evidence on the record demonstrates that a reasonable businessperson could find that the decision to use the president-elect's "brand" hotel made sense in the context of the PIC's objective.

The same rings true for the other portions of the District's waste claim. The other pieces of evidence that the District has provided, such as the January 20 event that the District has described as "a private party" and that the Defendants have characterized as an "inaugural event," fall below the high bar required for a waste claim. Even if the Trump Children were the focus of some events that the PIC provided, the District has not asserted in any of its fillings that the PIC's non-profit objective is in violation of any law, or in what way an inaugural ball is "egregious[ly] or irrational[ly]" divorced from the objective of "supporting the activities surrounding the 2017

Presidential inauguration." The record indicates that the January 20th event had food, drink, and guests. *See* PICSOF ¶¶ 157, 162. Such things seem to be commonplace installments for inauguration events.

The same arguments carry the day regarding of the PIC's payment for the Loews Madison Hotel block. The undisputed facts offered by both sides demonstrate that none of the financial planners at the PIC were aware of the Loews Madison contract until well after its execution. *See* PSOF ¶¶ 99–107; *see also* Defendant PIC's Opponent's Statement of Disputed Material Facts ("PICSDMF") ¶¶ 99–107. The record also indicates that many of the people who used the Loews Madison rooms were members of the Trump Organization, the original signatory of the contract. *See* PSOF ¶ 97. But regardless of whether there were outstanding questions as to who was using that room block, the Court agrees that a reasonable businessperson could determine that paying the room block that was signed for by one of its own members was a valid expense to avoid a collections dispute. To be clear, the Business Judgment Rule is not an Aegis Shield that protects the business decisions of any one party who invokes it. However, based on the evidence on this record, the Court agrees that the business rationale that the parties have offered provide sufficient shelter to negate the District's waste claim.

In short, there is no genuine dispute that the value paid for the space at the Trump Hotel reaches the extreme burden that Plaintiff need to carry a waste claim to its fruition. Defendants are entitled to judgment as a matter of law.

C. PRIVATE INUREMENT

i. Legal Standards for Private Inurement

The next claim for which all parties seek summary judgment is the District's private inurnment claim. Tax exemption laws in the United States have strict standards, and if even a single dollar of an organizations net earnings inure to the benefit of a private individual then that organization will lose its tax-exempt status. *See id.* Even in situations where a private individual does not "officially" receive funds from a non-profit, a court can still find private inurement if the organization has improperly diverted benefits to a disqualified individual. *See Spokane Motorcycle Club v. United States*, 222 F. Supp 151, 153–54 (E.D. Wa. 1963) (finding private inurement even for the providing of refreshments). A finding of inurement is a finding of fact. *See Church of Scientology, California v. Comm'r*, 823 F.2d 1310, 1317 (9th Cir. 1987).

The landmark private inurement case on point is *Church of Scientology, California v. Commissioner of Internal Revenue*. In that case the Ninth Circuit defined two sets of factors that a court can consider when looking at an inurement case. The first, called "overt indicia" of inurement, like payment of salaries and assets on the books, typically play the most significant factor in a court's findings. *Id.* at 1317. "Payment of reasonable salaries" typically does not constitute inurement, however, "payment of excessive salaries" does. *Id.* at 1316. Conversely, "covert indicia" consists of activities like off-the-books control by the owner of another business venture. *Id.* In *Church of Scientology,* the court found that Mr. Ron Hubbard exercised a significant degree of control over the Church and that his off-the-books management was indicative of inurement. *Id.* at 1322.

The rather amorphous posture of law in this sector makes clear that in any claim for private inurement there is no "one size fits all" standard. For example, it would be sufficient, but not

necessary, for the Plaintiff to prove that the PIC paid higher than reasonable compensation for services rendered. *See Birmingham Business College, Inc. v. Comm'r*, 276 F.2d 476, 480 (5th Cir. 1960) (affirming a tax court's finding of inurement when salaries paid were higher than reasonable). Likewise, it would be equally sufficient for the District to show that the PIC paid reasonable value for a service, but it paid for that service as part of a private benefit scheme which excluded other parties. *See Hall v. Comm'r*, 729 F.2d 632, 634 (9th Cir. 1984) ("no part of an entity's net earnings inures the benefit of a private shareholder or individual"). When boiled down, the fundamental question in a private inurement claim asks whether the funds of a non-profit organization flowed to the benefit of a private individual not covered by the public interest goals of the non-profit. *See Freedom Church of Revelation v. United States*, 588 F. Supp. 693, 698 (D.D.C. 1984).

ii. The District of Columbia's Private Inurement Claim

Private inurement cases, despite their unique factual intricacies, share a common component with so many other cases in the American legal system. They require a court to define the word "reasonable." *Church of Scientology*, 823 F.2d at 1116. The Defendants again argue that here the word "reasonable" has one definition only: "fair market value." *See* DTHMSJ at 4. Alternatively, the Plaintiff takes a much looser definition of the word. The District asserts that the Court should analyze other factors, such as "the nature of the relationship between the non-profit corporation and the for-profit corporation with which it transacts." PCOPP at 9. In essence, the Plaintiff would have this Court use the covert and overt indicia that the 9th Circuit discussed in *Church of Scientology*. Although the Defendants provide a much more "mathematical" target for

assessing reasonability, this Court is persuaded that there are other factors to consider than simply "fair market value".

With the *Church of Scientology* factors in mind, the Court turns to the parties' arguments. The Plaintiff argues that it is entitled to summary judgment because payments for the use of the Trump Hotel constitute private inurement as a matter of law. *See* PMSJ at 11. The District's primary argument focuses on the costs paid for the use of the Trump Hotel in comparison to the amount paid by Prayer Breakfast for use of the same space on the same day, as well as compared to the Hotel's own pricing guidelines. *See id.* at 12. The District argues that the design of such payments was not to further the mission of the PIC, but rather to help fill the coffers of the Trump Organization brand. *Id.* at 11. Of essential importance to its argument is the assertion that members of the Trump Organization, specifically that of then president-elect Donald Trump, exerted influence over the PIC in the management of its non-profit funds in an illegal excess benefits transaction. *Id.* at 14. The District's lone expert in this case has opined that the actions taken by former president Trump and his family "aptly demonstrate[d] the level of personal involvement by Donald J. Trump and his family members in PIC's operational decision making." *Id.* Finally, the District asserts that by paying the cost of the Loews Madison Hotel room block for the night in question, the PIC privately inured members of the Trump Organization, which was disputedly a signatory on the contract. *Id.* at 13.

Conversely, Defendants contend that all of the PIC's expenses were reasonably related to its non-profit goals. The Defendants arguments rest heavily on their assertion that all expenses paid in this case were at fair market value. PICMSJ at 6. Defendants aver, similar to their waste claims, that there cannot be a claim for private inurement where the expenses in question are at fair market value. *Id.*; *see also* DTMSJ at 4. Further, they argue that the expenses paid by PIC to

Loews Madison Hotel were rational expenses that the members of the PIC determined that they should shoulder to avoid complication or potential litigation. *See* PICMSJ at 14.

After reviewing the record, the Court finds that there is a genuine dispute of material fact about the reasonability of expenses paid for services at the Trump Hotel and at the Loews Madison Hotel. The law on point demonstrates that the fair market value of a service rendered is a favored factor in determining whether payment was reasonable. *See Sastry*, 585 A.2d at 1329. However, as the authority cited by both the Plaintiff and the Defendants point out, there are other factors to consider. Did higher ranking Trump family officials have the ability to control the workings of the PIC? Did members of the PIC ignore internal recommendations to pay the Trump Hotel for services that could have been offered for free? If so, did they make those payments for strategic reasons, or for other purposes? The Defendants have produced their lineup of fact witnesses, exhibits, and an expert which they use to argue that the transactions in this case were not part of a private benefit scheme, and that they were at fair market value. *See* PICMSJ at 6–9. Conversely, the Plaintiff has produced its lineup of exhibits, fact witnesses, and an expert to argue that there were other lower cost options and the PIC simply used its funds to benefit the Trump Organization global brand. *See* PMSJ at 13–14. In a sliding scale case like a private inurement one, the Court is especially cognizant that it is forbidden from weighing the evidence at the summary judgment stage. Resolving such questions here, without having the benefit of subjecting the witnesses to cross examination and testing their veracity, would be improper.

Accordingly, the Court holds that a genuine dispute of material fact exists about the reasonableness of the PIC's payments for the services at the Trump Hotel and for the Payment of the Loews Madison Hotel room block. On the issue of private inurement, the motions of all parties are denied.

CONCLUSION

Following the production of discovery, Defendant Trump Organization has demonstrated that it is not subject to the personal jurisdiction of this Court. Further, the Defendants have shown that they are entitled to summary judgment on the District's waste claim. Finally, the evidence shows that there remains a genuine dispute of material fact regarding the District's private inurement claim. Accordingly, it is this 8th day of November, 2021, hereby

ORDERED that the Defendant Trump Organization LLC's Opposed Motion for Summary Judgment is **GRANTED**, and that Defendant Trump Organization is to be dismissed from the case; and it is further

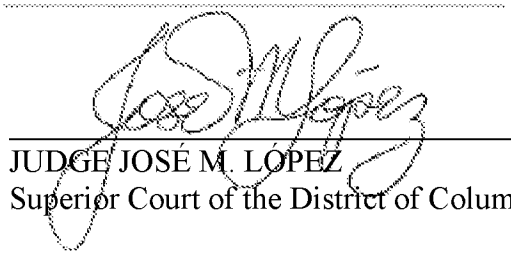
ORDERED that Defendant 58th Presidential Inaugural Committee's Opposed Motion for Summary Judgment is **GRANTED IN PART, and DENIED IN PART**; and it is further

ORDERED that Defendant Trump Hotel's Opposed Motion for Summary Judgment is **GRANTED IN PART, and DENIED IN PART**; and it is further

ORDERED that the District of Columbia's Opposed Motion for Summary Judgment is **DENIED**; and it is further

ORDERED that this matter is set for further Status Hearing to determine how the parties intend to proceed on **February 17, 2022 at 9:30 a.m.**

SO ORDERED.



JUDGE JOSÉ M. LÓPEZ
Superior Court of the District of Columbia

Copies via CaseFileXpress to:

Jimmy Rock
Leonor Miranda
Nicole Hill
Matt James
Jennifer Jones
Counsel for the Plaintiff

David Leviss
K. Lee Blalack
Rebecca Woods
James Billings-Kang
Scott Herman-Heath
Alexander Reed
Counsel for the Defendants