Skyview Capital, LLC v Conduent Bus. Servs., LLC
2026 NY Slip Op 31126(U)
March 23, 2026
Supreme Court, New York County
Docket Number: Docket No. 650761/2020
Judge: Andrew Borrok
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SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK: COMMERCIAL DIVISION PART 53

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SKYVIEW CAPITAL, LLC,CONTINUUM GLOBAL SOLUTIONS, LLC

Plaintiff,

- v -

CONDUENT BUSINESS SERVICES, LLC,CONTINUUM GLOBAL SOLUTIONS LIMITED,

Defendant.

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INDEX NO. 650761/2020

MOTION DATE 10/20/2025

MOTION SEQ. NO. 020

DECISION + ORDER ON MOTION

HON. ANDREW BORROK:

The following e-filed documents, listed by NYSCEF document number (Motion 020) 649, 650, 651, 652, 653, 654, 655, 656, 657

were read on this motion to/for SEVER ACTION.

Upon the foregoing documents, Conduent Business Services, LLC (**Conduent**)'s motion to sever and enter judgment pursuant to CPLR §§ 603, 3212(e), and 5012 is GRANTED solely to the extent that the third counterclaim is severed but is otherwise denied.

Pursuant to the Appellate Division Decision (hereinafter defined), a CPLR § 3212(c) immediate hearing before a referee is ordered on the issue of damages as to the third counterclaim.

Reference is made to (i) an Amended and Restated Equity Securities and Asset Purchase Agreement (the **APA**; NYSCEF Doc. No. 653), dated February 1, 2019, by and between Conduent and Skyview, and (ii) a Decision and Order of the Appellate Division (the **Appellate Division Decision**; *Skyview Cap., LLC v Conduent Bus. Servs., LLC*, 239 AD3d 426 [1st Dept 2025]), pursuant to which, as relevant, the Appellate Division remanded to this Court for a hearing on the disputed amount of Conduent's third counterclaim:

Order, Supreme Court, New York County (Andrew Borrok, J.), entered on or about December 8, 2023, which, insofar as appealed from, granted in part and denied in part the motion of defendant/counterclaim plaintiff Conduent Business Services, LLC for summary judgment and granted the motion of plaintiffs/counterclaim defendants Skyview Capital, LLC and Continuum Global Solutions, LLC and counterclaim defendant Continuum Global Solutions Ltd. (collectively, Skyview) for partial summary judgment, unanimously modified, on the law, to grant Conduent's motion for summary judgment dismissing Skyview's fraud claim and request for punitive damages and declaring that the setoff limit under the promissory notes is $5 million, deny Conduent's motion as to its third counterclaim and remand for a hearing on that claim, deny Skyview's motion for partial summary judgment, and otherwise affirmed, without costs.

This action arises from Conduent's sale to Skyview of certain assets, namely, customer care call centers and customer care contracts, called "Liberty."

Skyview's fraud claims based on Conduent's failure to disclose reductions in force (RIFs) of recruiters and nonparty Sprint's change of plan concerning repatriating 150 jobs are duplicative of its contract claims (*see e.g. Panwest NCA2 Holdings LLC v Rockland NCA2 Holdings, LLC*, 205 AD3d 551, 551-552 [1st Dept 2022]).

Skyview's fraud claim asserting that Conduent should have disclosed the Q3 reforecast, while not duplicative of the contract claims, should have been dismissed. The July 2018 management presentation, sent to Skyview from Conduent's investment banker, said that Conduent had no duty to update it. In addition, both the initial asset purchase agreement (initial APA) and amended asset purchase agreement (APA) state Skyview "ha[d] made its own evaluation of the adequacy and accuracy of all estimates, projections, [and] forecasts furnished" to it. These disclaimers are specific enough to bar Skyview's fraud claim *(see e.g. HSH Nordbank AG v UBS AG*, 95 AD3d 185, 201 [1st Dept 2012]; *see also Permasteelisa, S.p.A. v Lincolnshire Mgt., Inc.*, 16 AD3d 352, 352 [1st Dept 2005]).

In addition, Skyview, a sophisticated party, cannot show justifiable reliance on misrepresentations, as it "failed to make use of the means of verification that were available to it" (*Ventur Group, LLC v Finnerty*, 68 AD3d 638, 639 [1st Dept 2009] [internal quotation marks omitted]; *see also Global Mins. & Metals Corp. v Holme*, 35 AD3d 93, 100 [1st Dept 2006], *lv denied* 8 NY3d 804 [2007]). Under the initial APA, Skyview had access to Conduent's books and records from September 28, 2018 until February 1, 2019. It could have tested the prediction of $461 million in revenue for 2018 against such books and records. Furthermore, on October 16, 2018, Conduent sent Skyview a forecast of $439.4 million for 2018, which is much lower than the $461 million forecast (and also lower than the Q3 reforecast of $446 million).

Sprint's plans were not peculiarly within Conduent's knowledge; Skyview could have inquired with Sprint about its repatriation plans (*see LMM Capital Partners, LLC v Mill Point Capital, LLC*, 224 AD3d 504, 505, 508 [1st Dept 2024] [the plaintiff could have directly contacted the customers of the business it wanted to acquire]). In fact, Conduent and Skyview met with Sprint months before Skyview signed the final APA.

Because we are dismissing Skyview's fraud claim, its request for punitive damage is also dismissed, as there is no indication that Conduent's conduct was aimed at the public generally (*see e.g. Rocanova v Equitable Life Assur. Socy. Of U.S.*, 83 NY2d 603, 613 [1994]).

In light of the dismissal of Skyview's fraud claim, Conduent is entitled to partial summary judgment on its first and second counterclaims to the extent of declaring that the maximum Skyview can set off against its liability on the promissory notes is $5 million (the limit set forth in the APA).

The court properly denied Conduent's motion for summary judgment dismissing Skyview's contract claims, but it also should have denied Skyview's motion for partial summary judgment on so much of its contract claim as dealt with Ordinary Course of Business. Conduent correctly notes that "[s]omething which is done as a matter of corporate historical practice is, as a matter of law, done 'in the ordinary course of business'" (*Unisys Corp. v Hercules Inc.*, 224 AD2d 365, 368 [1st Dept 1996]). Conduent submitted evidence that RIFs of recruiters had occurred before and that its advertising budget had been "stalled" before. However, Skyview points out that Ordinary Course of Business is a defined term. Therefore, it contends, it is not sufficient that RIFs occurred at Conduent before; rather, Conduent had to show that RIFs occurred specifically at Liberty.

While Liberty was not a pre-existing business, but rather a group of assets that Conduent carved out of its business, Skyview's contention nevertheless is textually grounded in the APA. Accordingly, Conduent did not establish prima facie entitlement to summary judgment dismissing Skyview's contract claims. On the other hand, because Liberty was part of Conduent, Conduent's evidence about company-wide RIFs and advertising raised issues of fact as to whether RIFs and reduction of advertising had previously occurred at Liberty.

As to the part of Skyview's contract claim dealing with Conduent's failure to give it prompt notice of Material Adverse Effects (MAEs), Conduent's motion was correctly denied, as the evidence submitted by the parties showed triable issues of fact. Conduent contends that its reduction of advertising and the number of recruiters, and the loss of the repatriated Sprint jobs, are not MAEs, because they fall within the exception to MAEs in that they are an "event, circumstance, [or] change . . . relating to or arising in connection with . . . the failure of Business to meet any projections, forecasts, guidance, estimates, milestones or budgets or predictions in revenue or earnings or other financial or operating metrics for any

> periods." However, the exception to the MAEs should not be read so broadly that it swallows up the definition of MAEs.
>
> Based on the transcript of the oral argument on the parties' motions, which was incorporated into the written order on appeal, it seems that the court granted summary judgment to Conduent on its third through sixth counterclaims, not just on the fourth and fifth (involving the Transition Services Agreement [TSA]).
>
> ***The court should not have granted Conduent summary judgment on its third counterclaim regarding the Jamaica Deferred Transfer.*** Section 1.7(e) of the APA says, "Payment of the net income or loss shall be due following the Deferred Transfer Date and within ten . . . Business Days after such amount has been agreed or finally determined." ***The amount due for the Jamaica Deferred Transfer has not been agreed to by the parties.*** Thus, the court should hold a hearing on the disputed amount (see CPLR 3212[c]).
>
> Skyview's contention that Conduent's counterclaims concerning the TSA and Sublease Guarantees are unliquidated is unavailing. Skyview fails to show any dispute about the amounts owed under those agreements, as opposed to the Jamaica Deferred Transfer. Skyview's contention that it would be inequitable to make it pay on the counterclaims is also unavailing. Skyview was supposed to pay $25 million to Conduent for Liberty; to date, it has paid nothing. Meanwhile, it has been collecting revenue from Liberty's customers (including the ones related to the Jamaica business), while Conduent has had to pay all of the operating costs of that business.
>
> We decline to consider the new arguments raised by Skyview in its reply brief on appeal.

(*id.* [emphasis added]).

In support of its motion and relying on CPLR §§ 602, 3212(e), and 5012, Conduent argues that the Court should order severance of the third counterclaim and enter judgment as to the "undisputed portion." The argument fails in part.

CPLR § 603 provides that the Court may order severance "[i]n furtherance of convenience or to avoid prejudice." CPLR § 3212(e) permits the Court to grant partial summary judgment and, in its discretion, sever claims or direct that entry of judgment be held in abeyance. CPLR § 5012

states that "[t]he court, having ordered a severance, may direct judgment upon a part of a cause of action or upon one or more causes of action as to one or more parties."

As discussed above, the Appellate Division remanded for a CPLR § 3212(c) hearing on the disputed amount of the third counterclaim. Pursuant to Section 1.7(e) of the APA, the parties expressly agreed that payment is due when the amount has been agreed to or finally determined:

> Payment of the net income or loss shall be due following the Deferred Transfer Date and within (10) Business Days after such amount has been agreed or finally determined.

(NYSCEF Doc. No. 653 § 1.7[e]).

The amount due for the Jamaica Deferred Transfer has not been agreed to or finally determined and will not be until the CPLR § 3212(c) hearing remanded by the Appellate Division occurs. As such, the third counterclaim is severed but the request for the entry of judgment as to the alleged undisputed amount is denied (*JJFN Holdings, Inc. v Monarch Inv. Props., Inc.*, 289 AD2d 528, 531 [2d Dept 2001] ["A court may not, in the guise of interpreting a contract, add or excise terms or distort the meaning of those used to make a new contract for the parties"]).

In accordance with the Appellate Division Decision discussed above, pursuant to CPLR § 3212(c) the matter is referred to a judicial hearing officer to hear and determine the disputed amount.

Accordingly, it is hereby ORDERED that Conduent's motion to sever and enter judgment pursuant to CPLR §§ 603, 3212(e), and 5012 is GRANTED solely to the extent that the third counterclaim is severed but is otherwise denied; and it is further

ORDERED that a Judicial Hearing Officer ("JHO") or Special Referee shall be designated to hear and determine the disputed amount, which is hereby submitted to the JHO/Special Referee for such purpose; and it is further

ORDERED that the powers of the JHO/Special Referee shall not be limited beyond the limitations set forth in the CPLR; and it is further

ORDERED that this matter is hereby referred to the Special Referee Clerk for placement at the earliest possible date upon the calendar of the Special Referees Part (Part SRP), which, in accordance with the Rules of that Part (which are posted on the website of this court at www.nycourts.gov/supctmanh at the "References" link), shall assign this matter at the initial appearance to an available JHO/Special Referee to determine as specified above; and it is further

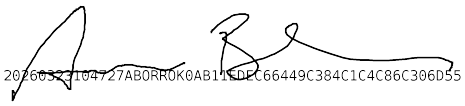
ORDERED that counsel shall immediately consult one another and counsel for the Conduent shall, within 15 days from the date of this Order, submit to the Special Referee Clerk by e-mail an Information Sheet (accessible at the "References" link on the court's website) containing all the information called for therein and that, as soon as practical thereafter, the Special Referee Clerk shall advise counsel for the parties of the date fixed for the appearance of the matter upon the calendar of the Special Referees Part; and it is further

ORDERED that the Conduent shall serve a pre-hearing memorandum within 24 days from the date of this order and the Counterclaim Defendants shall serve a pre-hearing memorandum within 20 days from service of Conduent's papers and the foregoing papers shall be filed with the Special Referee Clerk prior to the original appearance date in Part SRP fixed by the Clerk as set forth above; and it is further

ORDERED that the parties shall appear for the reference hearing, including with all witnesses and evidence they seek to present, and shall be ready to proceed with the hearing, on the date fixed by the Special Referee Clerk for the initial appearance in the Special Referees Part, subject only to any adjournment that may be authorized by the Special Referees Part in accordance with the Rules of that Part; and it is further

ORDERED that, except as otherwise directed by the assigned JHO/Special Referee for good cause shown, the trial of the issue specified above shall proceed from day to day until completion and counsel must arrange their schedules and those of their witnesses accordingly; and it is further

ORDERED that counsel shall file memoranda or other documents directed to the assigned JHO/Special Referee in accordance with the Uniform Rules of the Judicial Hearing Officers and the Special Referees (available at the "References" link on the court's website) by filing same with the New York State Courts Electronic Filing System (see Rule 2 of the Uniform Rules).



3/23/2026
DATE

ANDREW BORROK, J.S.C.

CHECK ONE:		**CASE DISPOSED**			X	**NON-FINAL DISPOSITION**	
		GRANTED		**DENIED**	X	**GRANTED IN PART**	**OTHER**
APPLICATION:		**SETTLE ORDER**				**SUBMIT ORDER**	
CHECK IF APPROPRIATE:		**INCLUDES TRANSFER/REASSIGN**				**FIDUCIARY APPOINTMENT**	**REFERENCE**