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SUPREME COURT OF THE STATE OF NEW YORK — NEW YORK COUNTY

PRESENT: Hon. KARLA MOSKOWITZ PART 03
Justice

FBEM

HARCH INTERNATIONAL LIMITED, a foreign corporation,
Plaintiff,

-against-

HARCH CAPITAL MANAGEMENT, INC., a Florida corporation, HARCH CLO I LIMITED, a foreign corporation, and JPMORGAN CHASE BANK, N.A., f/k/a CHASE BANK OF TEXAS, NATIONAL ASSOCIATION, a foreign corporation,
Defendants.

INDEX NO. 601312/2005E

MOTION DATE _____

MOTION SEQ. NO. 006

MOTION CAL. NO. _____

HARCH CAPITAL MANAGEMENT, INC., a Florida corporation,
Defendant/Counterclaim Plaintiff,

-against-

OLD HILL PARTNERS, INC., a Delaware Corporation,
Counterclaim Defendant.

The following papers, numbered 1 to _____ were read on this motion to/for _____

	PAPERS NUMBERED
Notice of Motion/ Order to Show Cause — Affidavits — Exhibits _____	_____
Answering Affidavits — Exhibits _____	_____
Replying Affidavits _____	_____

Cross-Motion: ☐ Yes ☐ No

Upon the foregoing papers, it is

ORDERED that this motion is decided in accordance with the accompanying Decision and Order.

Dated: June 13, 2007

KARLA MOSKOWITZ J.S.C.

Check one: ☐ FINAL DISPOSITION ☒ NON-FINAL DISPOSITION

Check if appropriate: ☐ DO NOT POST ☐ REFERENCE

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK: IAS PART 3

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HARCH INTERNATIONAL LIMITED, a foreign corporation,

Plaintiff,

-against-

Index No. 601312/2005

HARCH CAPITAL MANAGEMENT, INC., a Florida corporation, HARCH CLO I LIMITED, a foreign corporation, and JPMORGAN CHASE BANK, N.A., f/k/a CHASE BANK OF TEXAS, NATIONAL ASSOCIATION, a foreign corporation,

Defendants.

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HARCH CAPITAL MANAGEMENT, INC., a Florida corporation,

DECISION and ORDER

Defendant/Counterclaim Plaintiff,

-against-

OLD HILL PARTNERS, INC., a Delaware Corporation,

Counterclaim Defendant.

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Moskowitz, J.:

The court consolidates motion sequence numbers 006, 007 and 008 for disposition in this decision and order.

In motion sequence number 006, plaintiff Harch International Limited ("HIL") moves to dismiss Harch Capital Management, Inc.'s ("HCM") first counterclaim for tortious interference. In motion sequence number 007, plaintiff HIL moves for summary judgment on its first and second causes of action for breach of contract against HCM and the JPMorgan Chase Bank, N.A. ("Trustee"). In motion sequence number 008, Old Hill Partners, Inc. ("Old Hill") moves to

dismiss the first counterclaim.

This action involves a dispute over HCM's calculation of management fees and HIL's allegedly improper termination of the Collateral Management Agreement ("CMA") between HCM and Harch CLO I Limited ("Harch CLO"). HIL is the owner of 100% of Harch CLO's Class D Notes. The five-count amended complaint asserts three causes of action for breach of contract and two causes of action for breach of fiduciary duty. HIL's third cause of action against the Trustee for breach of the Trust Indenture and its fourth and fifth causes of action for breach of fiduciary duty against HCM are not at issue on these motions.

The court already stated the facts of this case in detail in its decision and order, dated May 26, 2006, on motion sequence number 005 in this action, in which the court denied HCM's motion to dismiss the amended complaint. Therefore, the court recites only those facts necessary to this decision. Unless this decision indicates otherwise, defined terms in this court's May 26, 2006 decision and order shall have the same meaning in this decision.

In a pleading dated September 8, 2006, HCM answered the amended complaint, asserting a counterclaim for tortious interference against HIL and Old Hill and claims for indemnification against HIL and Harch CLO. HCM states the following factual allegations in support of its counterclaims, the essence of which is that Old Hill improperly used its affiliates to accumulate a majority ownership interest in HIL and, subsequently, cause HIL to liquidate Harch CLO, thereby terminating the CMA and HCM's stream of fees.

Old Hill is an investment advisor that invests its clients' funds in fixed income assets with high levels of collateralization. Old Hill allegedly created Patriot Capital Markets

("Patriot"), FLT Credit Arbitrage Limited Trust ("FLT") and several other investment funds. Old Hill's president is non-party John Howe ("Howe").

The pleadings aver that Harch CLO was declining in value in 2001. Between 2001 and 2003, HIL reinvested distributions in Harch CLO totaling $15.2 million in an effort to boost the value of Harch CLO's portfolio and prevent its liquidation. On September 30, 2002, Old Hill and Patriot purchased shares of HIL common stock from non-party Armada Fund, Ltd. The purchased shares comprised 3.53% of HIL stock. According to HCM, Harch CLO's declining portfolio was improving by the end of 2002. HCM claims that the improvement was the result of an exchange offer involving a large block of IXC Communications 9% Senior Subordinated Notes due on April 15, 2008 ("IXC Notes"), the largest holder of which was Harch CLO. HCM avers that the notes would have to be redeemed at par or better in order for IXC Communications' parent company, Cincinnati Bell Inc., to avoid bankruptcy. HCM allegedly negotiated a transaction in which it exchanged the IXC Notes for Cincinnati Bell common stock, significantly boosting the value of Harch CLO and, in particular, the Class D Notes.

HCM claims that, in April 2003, Howe discovered that HCM was going to advise HIL's board of directors not to reinvest their Class D distributions because of the success of the IXC offer. At the heart of HCM's tortious interference claim is its allegation that Howe, armed with this knowledge, planned, on behalf of Old Hill, to obtain control over HIL in order to force the liquidation of Harch CLO, terminate the CMA and obtain Harch CLO's portfolio to manage for itself in order to inflate its own assets under management, earn additional fees and deprive HCM of fees.

To this end, Old Hill allegedly approached its client, Northwater Capital Management, Inc. ("Northwater"), that, together with Northwater's clients, owned substantial amounts of HIL shares. HCM claims that, without disclosing the purportedly confidential information, Howe, through Old Hill's affiliate, FLT, negotiated the purchase of HIL shares from Northwater and its clients at significant discounts in November and December of 2004. By the end of 2004, Old Hill and FLT held over 50% of HIL's shares. Old Hill also purchased a principal amount of $10 million in Class C Notes of Harch CLO, representing approximately 30% of the total outstanding Class C Notes.

According to HCM, Old Hill failed to disclose to any of the sellers of HIL's shares Old Hill's plan to acquire Harch CLO's portfolio or its belief about the portfolio's true value, but instead lied, telling the sellers that the portfolio was highly risky, near default, and that distributions on the Class D Notes could be cut off at any time.

Around June 2004, Old Hill, through its employees Ron Molloy ("Molloy") and William Costello ("Costello"), allegedly began discussing an agreement with Wachovia Capital Markets ("Wachovia"). Under this agreement, Wachovia would finance the purchase of Harch CLO assets through Wachovia's affiliate, Atlas Capital Funding, Ltd. ("Atlas"). Wachovia was to put the loans and bonds at issue into a total return swap ("TRS") facility. The TRS facility would allow FLT to make payments to Atlas in exchange for interest payments and capital gains the bank loans underlying the TRS facility generated. Old Hill and Wachovia allegedly agreed that Old Hill would manage the underlying assets of the TRS facility in exchange for management fees, fees that otherwise HCM would have earned as the portfolio manager. In formulating its

plan with Wachovia, Old Hill allegedly divulged to Wachovia detailed analyses of Harch CLO's portfolio. These discussions allegedly continued through January 2005.

On January 17, 2005, Old Hill convened an Extraordinary General Meeting of Shareholders of HIL ("1/17/05 HIL Meeting"), pursuant to paragraph 89 (a) of HIL's articles of association, that entitled HIL's majority members to convene the meeting to transact business. At this meeting, FLT and Old Hill voted to remove HIL's independent directors and appointed Molloy and Costello as the sole directors of HIL. Of the 47% of HIL shares that neither Old Hill nor FLT owned, no shareholders were present at the 1/17/05 HIL Meeting. According to HCM, Molloy and Costello did not disclose at the 1/17/05 HIL Meeting that they were working on a plan with Wachovia to purchase HIL's assets for Old Hill's own account or Old Hill's ownership interest in Class C Notes.

HCM claims that, immediately following the 1/17/05 HIL Meeting, Molloy and Costello resolved that HIL would redeem the Harch CLO notes. At this time, they disclosed Old Hill's ownership of Class C Notes and the potential conflict presented because a forced liquidation of Harch CLO would result in repayment of the Class C Notes prior to the repayment of the Class D Notes. Also on January 17, 2005, HIL notified Harch CLO of the redemption of its notes.

Ultimately, Old Hill was unable to purchase Harch CLO's portfolio, but the liquidation of Harch CLO caused the termination of the CMA because there was nothing left for HCM to manage.

Discussion

Breach of Contract - HIL's First Cause of Action

HIL moves for summary judgment on its first cause of action. HCM has cross-moved for

partial summary judgment to dismiss it.

HIL's first cause of action claims that HCM breached section 8 (a) of the CMA and the Trust Indenture by accepting payment of a $7.6 million incentive fee that exceeded the incentive fee permitted under the parties' agreements, thereby reducing the value of HIL's investment in the residual value of Harch CLO.

Section 8 of the CMA provides that:

> the Collateral Manager [HCM] will receive an incentive collateral management fee, payable on each Payment Date as provided below ... once the holders of Class D Subordinated Notes have received an annualized internal rate of return (such internal rate of return to be calculated based upon the distributions *received* on such current Payment Date and all prior Payment Dates ...) of at least 10% on the original principal amount of the Class D Subordinated Notes ...

(emphasis added). The Trust Indenture definitions incorporate by reference the CMA's definition of the Incentive Collateral Management Fee.

HIL claims that it was entitled to $15.2 million in distributions, but that those funds were reinvested in Harch CLO. When the $15.2 million is included in calculating the internal rate of return (IRR) on HIL's original principal investment of $30 million in Class D Notes, the IRR is 15.46% and thus triggers HCM's incentive fee under section 8 (a) of the CMA. Conversely, when the reinvested distributions are not included in the IRR calculation, HIL received a total profit of $2.4 million, with an IRR of only 1.96%, that fails to trigger HCM's incentive fee.

HIL argues that it never "received" the reinvested distributions within the meaning of the CMA, because HIL never actually possessed or controlled the reinvested distributions. According to HIL, the funds that were due to HIL never left the control of the Trustee or HCM, and HIL never received them. HCM counters that HIL constructively received the reinvested

distributions.

In *Edgewater Constr. Co., Inc. v 81 & 3 of Watertown, Inc.* (24 AD3d 1229, 1230 [4th Dept 2005]), the defendant entered into a stipulation providing that she may be liable to the extent that she "received" certain trust funds. Defendant argued that the word "received" limited her liability to monies "actually received." The court held that the term "received" included "constructively received funds where the party 'direct[s] application of the funds to satisfy a personal debt or to achieve some other personally desired result.'" (*Id.* at 1231 [citation omitted]).

Here, HIL does not dispute that the distributions at issue were reinvested. Tellingly, HIL's own financial statements for 2001, 2002 and 2003 admit that, during each year, Harch CLO made distributions of $6,173,452, $1,312,500 and $1,577,813, respectively, "which were reinvested in the equity tranch of the CLO." (Friedman Aff., Exs. 3 at HIL 018289, 4 at HIL 018321, and 5 at HIL 002690). Because HIL acknowledged that the distributions were reinvested, under *Edgewater*, it is irrelevant whether HIL actually possessed the distributions. What is relevant is that HIL applied those funds "to achieve [a] personally desired result" (*id.*), here to increase the value of Harch CLO's assets.

HIL cites *Brennan v Murphy & Walsh Assoc.* (234 AD2d 636 [3d Dept 1996]) in support of its argument that the word "received" requires actual possession. In *Brennan*, the plaintiff's employment agreement provided that he was to receive incentive compensation of "25% of the gross commissions received by [defendant] which are directly attributable to [plaintiff's] efforts." (*Id.* at 637). In *Brennan*, the defendant received client commissions only in excess of retainers those clients paid. The court held that the defendant "did not receive commission payments from

its clients since they did not exceed the amount of the retainers," and, therefore, that the defendant "was not obligated to pay plaintiff incentive compensation." (*Id.* at 638). Thus, in *Brennan*, the plaintiff did not have any right to possess or control the commissions at issue because the defendant had no such right. Here, conversely, as discussed above, HIL had a right to reinvest its distributions and exercised that right. Therefore, HIL constructively received the funds, and *Brennan* is distinguishable on its facts.

For the foregoing reasons, HCM did not breach section 8 (a) of the CMA by accepting the incentive fee. Accordingly, the court denies HIL's motion for partial summary judgment on its first cause of action for breach of this provision of the CMA and grants HCM's cross-motion for partial summary judgment dismissing this cause of action.

Breach of Contract - HIL's Second Cause of Action

HIL has also moved for summary judgment on its second cause of action. Both HLM and the Trustee have cross-moved to dismiss it.

HIL's second cause of action alleges that HCM and the Trustee breached the Trust Indenture by failing to cause new notes to issue to HIL, by failing to properly account for the reinvestment in calculating the IRR that was tied to HCM's incentive fee and reducing the residual value of Harch CLO that HIL received, and by failing to demand that HCM return the incentive fee, despite HIL's demand to do so. HCM counters that the Trust Indenture did not require the issuance of new notes in connection with the reinvested distributions and that limited liability clauses in the CMA require dismissal of HIL's claim.

Section 2.11 of the Trust Indenture permits Harch CLO to issue additional notes in exchange for cash. At HCM's request, in a memorandum dated November 19, 2001, HCM's

counsel, Kirkland & Ellis, analyzed whether the Trust Indenture prohibited HIL's reinvestments of distributions ("K&E Memo"). The K&E Memo acknowledges that the Trust Indenture does not explicitly address the reinvestment of distributions. Yet, if the reinvestment were made under the Trust Indenture, it appears that section 2.11 is the only provision of the Trust Indenture that accepts the context of the parties' dispute, because it permits Harch CLO to issue additional notes in exchange for cash. It is possible that HCM, as the manager, requested that the Trustee implement the reinvestment of distributions under section 2.11 of the Trust Indenture, that contemplates the issuance of new notes. However, if the reinvestment was not pursuant to section 2.11, it is not clear to the court whether it falls under the Trust Indenture at all, as opposed to under a separate agreement among the parties. Thus, at this juncture, a question of fact exists as to the nature of the parties' agreement. Specifically, a question exists as to what the $15.2 million in reinvested distributions was for, and what, if anything, HIL was to receive in exchange for this reinvestment.

The parties dispute the application of the limitation of liability clause in section 10 (a) of the CMA. This provision requires HCM to perform its duties under the CMA "in good faith" and limits HCM's liability to "acts or omissions constituting bad faith, willful misconduct, gross negligence or reckless disregard" under the CMA and the Trust Indenture.

"[A] party's good faith, which necessitates examination of a state of mind, is not an issue which is readily determinable on a motion for summary judgment." (*Coan v Estate of Chapin*, 156 AD2d 318, 319 [1st Dept 1989]). This is particularly true where, as here, a question of fact exists as to the facts surrounding the nature of the agreement and the alleged breach.

For the foregoing reasons, the court denies HIL's motion for partial summary judgment

on the second cause of action. The court grants HCM and the Trustee's cross-motions for partial summary judgment on the second cause of action to the extent that this cause of action repeats the claims dismissed from the first cause of action and otherwise denies the cross-motion. Specifically, as discussed above, because HIL received the reinvested distributions, neither HCM nor the Trustee can be liable for factoring the reinvested distributions into the calculation of the IRR.

With respect to the Trustee, the outstanding issue on HIL's second cause of action is HIL's claim that the Trustee breached the Trust Indenture by failing to request or demand the issuance of additional notes evidencing HIL's reinvested distributions. However, HIL fails to identify any provision of the Trust Indenture requiring the Trustee to cause the issuance of new notes. The Trust Indenture limits the Trustee's duties to those that are "specifically set forth in [the] Indenture," and it states that "no implied covenants or obligations shall be read into this Indenture against the Trustee." (Trust Indenture, § 6.1 [a] [i]).

Therefore, the Trustee need not have requested or demanded the issuance of additional notes. As discussed above, the Trust Indenture permitted Harch CLO to issue new notes, not the Trustee (Trust Indenture, §§ 2.11, 3.3), and, under the CMA, Harch CLO appointed HCM to serve as its collateral manager, that included managing the "reinvestment of Collateral Debt Obligations and performing certain administrative functions on behalf of [Harch CLO]" (CMA, § 2.2). Under section 1 of the Subadvisory Agreement, HCM had "full discretion in the management of [HIL's] investment transactions ..., the allocation of [HIL's] assets among investment vehicles and direct investments ... and the monitoring of the performance of the securities portfolio on a continuing basis." Accordingly, the court grants the Trustee's cross-

motion for partial summary judgment dismissing this portion of the claim and dismisses the second cause of action in its entirety as to the Trustee.

HCM's Counterclaim Against HIL and Old Hill

HCM's first counterclaim, that it asserts against HIL and Old Hill, is entitled "Tortious Interference with the CMA." HIL and Old Hill have moved separately to dismiss it. This claim alleges that HIL constituted a new board of directors comprised of Old Hill employees Molloy and Costello and that Old Hill and HIL then caused HIL to redeem notes and terminate the CMA. The essence of this claim is that HIL and Old Hill's redemption of notes caused Harch CLO to liquidate, thereby cutting off HCM's management fees and ending HCM's business relationship with Harch CLO.

Although the counterclaim is entitled "Tortious Interference with the CMA," HCM apparently means this counterclaim to address tortious interference with the business relationship the CMA embodies. However, in case HCM meant to claim tortious interference with the CMA itself, the court will address both tortious interference with contract and tortious interference with prospective business relations.

1. Tortious Interference with Contract

"Tortious interference with contract requires the existence of a valid contract between the plaintiff and a third party, defendant's knowledge of that contract, defendant's intentional procurement of the third-party's breach of the contract without justification, actual breach of the contract, and damages resulting therefrom." (*Lama Holding Co. v Smith Barney Inc.*, 88 NY2d 413, 424 [1996]). However, "there can be no liability for intentional interference with contract unless there is a breach of an existing contract." (*Kosson v Algaze*, 203 AD2d 112, 113 [1st Dept

1994], *affd* 84 NY2d 1019 [1995]; *Aetna Cas. and Sur. Co. v. Aniero Concrete Co.*, 404 F3d 566, 589 [2d Cir 2005] ["(a)s the complaint alleges nothing more than (the) exercise of (a) contractual right, it cannot support a claim for tortious interference with contract"]).

By its terms, section 12 (a) of the CMA could be terminated by failure to issue notes by a certain date, liquidation of the collateral securing the notes, or termination of the Trust Indenture in accordance with its terms. Here, the CMA terminated because of the liquidation of Harch CLO's collateral. HCM's counterclaim acknowledges that the CMA was terminated pursuant to section 12 (a) and that, after the liquidation of Harch CLO, there was nothing left for HCM to manage. (Counterclaim, ¶¶ 214, 230). HCM's counterclaim fails to allege any breach of the CMA. To the contrary, HCM's claim concedes that the CMA was terminated by its own terms under section 12 (a). Therefore, having failed to allege a breach, HCM fails to state a cause of action for tortious interference with contract.

2. Tortious Interference with Prospective Business Relations

HCM argues that its first cause of action states a claim for tortious interference with business relations, and that "[t]here is no requirement that a plaintiff alleging tortious interference with a business relationship embodied in a contract must allege breach of that contract to state a claim." (HCM Opp. Mem. of Law, at 9 n 1). Tortious interference with prospective business relations requires a showing of: (1) business relations with a third party; (2) the defendant's interference with those business relations; (3) the defendant acted with the sole purpose of harming the plaintiff or used dishonest, unfair, or improper means; and (4) injury to the business relationship. (*Guard-Life Corp. v S. Parker Hardware Mfg. Corp.*, 50 NY2d 183 [1990]; *Carvel v Noonan*, 3 NY3d 182, 190 [2004]; *NBT Bancorp Inc. v Fleet/Norstar Financial*

Group, Inc., 87 NY2d 614 [1996]). The wrongful conduct described in the third element of the claim "must amount to a crime or an independent tort. Conduct that is not criminal or tortious will generally be 'lawful' and thus insufficiently 'culpable' to create liability for interference with prospective contracts or other nonbinding economic relations." (*Carvel Corp.*, 3 NY3d at 190). When a contract embodies the business relationship for which a party alleges interference, there cannot be a claim for tortious interferences with prospective business relations.

For example, in *D'Andrea v Rafla-Demetrious* (3 F Supp 2d 239 [EDNY 1996], *affd* 146 F3d 63 [2d Cir 1998]), the plaintiff claimed that the defendants had tortiously interfered with his contract with the American Board of Radiology ("ABR") and with the plaintiff's prospective business relations with the ABR. The court granted the defendants' motion for summary judgment dismissal of the claim for tortious interference with prospective business relations, because the plaintiff made no allegation that the defendant "interfered with any future relationship that had not already been formed between the ABR and [the plaintiff]." (*Id.* at 250). The court reasoned:

> Here, the only specific business relationship that existed at the time of defendants' alleged improper interference was the relationship that D'Andrea had with the ABR. However, this relationship was neither precontractual nor prospective because, according to D'Andrea, he had an existing contract with the ABR. Indeed, this contract is the basis of his tortious interference with contract claim. It follows that D'Andrea's relationship with the ABR cannot serve as the basis for both a tortious interference with contract claim and a tortious interference with prospective business relations claim.

(*Id.*).

HCM cites *Guard-Life Corp.* (50 NY2d 183, *supra*) in support of its argument. In *Guard-Life Corp.*, the Court of Appeals determined that interference with contracts that are

voidable or terminable at will should be treated as claims for interference with business relations, not interference with contract. (*Id.* at 192). Here, however, the documentary evidence refutes any claim that the CMA is terminable at will. As discussed above, section 12 (a) of the CMA sets forth three circumstances that trigger termination of HCM as the Collateral Manager. Section 12 also provides for HCM's resignation, but the CMA does not permit removal at will.

HCM's argument concedes that its business relationship with Harch CLO was embodied in the CMA. (HCM Opp. Mem. of Law, at 9 n 1). The counterclaim itself is denominated as "Tortious Interference with the CMA." (Counterclaim, at 33). In addition, the first sentence of the counterclaim concedes that "HCM's counterclaims against HIL and Old Hill arise out of HIL's and Old Hill's joint tortious and intentional interference with HCM's *contract* to manage Harch CLO in return for fees," and the pleading repeatedly refers to Old Hill's alleged interference with the existing CMA and the existing business relationship between HCM and Harch CLO embodied in the CMA. (Counterclaim, ¶¶ 157, 227-32 [emphasis added]). HCM fails to identify any business relations HIL or Old Hill interfered with that are not embodied in the CMA, or that had not yet been reduced to a formal contract. Therefore, HCM's claim arises under the CMA, not any prospective, unidentified business relations.

Because of this determination, I will not discuss other arguments relating to tortious interference with prospective business relationship such as wrongful means or economic justification that the parties have made. However, to the extent that HCM's allegations accuse HIL or Old Hill of misappropriating confidential information to support a claim for tortious interference, the court will address them. HCM avers that Molloy and Costello, the new HIL directors, conspired with Old Hill to steal the assets of Harch CLO, fraudulently concealed

conflicts of interest, misappropriated confidential information from HCM and breached fiduciary duties owed to HIL's minority shareholders. While the pleading alleges that Old Hill, either directly or through its affiliates, acquired shares of HIL, the pleading fails to explain how Old Hill "stole" the shares. Nor does HCM explain in any detail the substance of its confidentiality agreement with Old Hill or HIL, the nature of the confidential information improperly disclosed, how it was misappropriated, or how Old Hill used the information to accomplish the redemption of notes and liquidation of Harch CLO. (*Gordon v Dino De Laurentiis Corp.*, 141 AD2d 435, 436 [1st Dept 1988] [claim based upon improper disclosure of confidential information dismissed where allegations were vague and conclusory and failed to identify confidential information disclosed]).

Moreover, the essence of HCM's claim concerning Old Hill's misappropriation of confidential information is that Old Hill used the information in dealings with Wachovia that Old Hill allegedly designed as a plot to steal Harch CLO's portfolio assets. However, HCM's counterclaim concedes that Old Hill was ultimately unable to purchase Harch CLO's portfolio. (Counterclaim, ¶ 213). Thus, Old Hill's purported scheme, that lies at the heart of HCM's claim, never materialized.

Finally, according to HCM's pleading, any claims concerning conflicts of interest or breaches of fiduciary duties belonged to the minority shareholders of HIL, not HCM. None of the cases that HCM cites involve a plaintiff asserting the breach of a fiduciary duty or conflicts of interest that belonged to a third party. Therefore, HCM's cases in support of its argument are not applicable.

For the foregoing reasons, HCM fails to state a cause of action for tortious interference

with contract or tortious interference with prospective business relations against either HIL or Old Hill. Therefore, the court grants HIL and Old Hill's motions to dismiss HCM's first counterclaim.

Accordingly, it is hereby

ORDERED that plaintiff Harch International Limited's motion (motion sequence number 007) for partial summary judgment on the first and second causes of action of the amended complaint is denied; and it is further

ORDERED that defendant Harch Capital Management, Inc.'s cross-motion for partial summary judgment is granted to the extent that the first cause of action of the amended complaint is severed and dismissed, the second cause of action of the amended complaint is severed and dismissed to the extent that it repeats the dismissed claims of the first cause of action with respect to Harch International Limited's receipt of reinvested distributions, and the cross-motion is otherwise denied; and it is further

ORDERED that the cross-motion of defendant JPMorgan Chase Bank, N.A. f/k/a CHASE BANK OF TEXAS, NATIONAL ASSOCIATION for partial summary judgment is granted and the second cause of action of the amended complaint is severed and dismissed in its entirety as to this defendant; and it is further

ORDERED that the motions of Harch International Limited (motion sequence number 006) and Old Hill Partners, Inc. (motion sequence number 008) are granted and Harch Capital Management's first counterclaim is severed and dismissed, and the action is dismissed in its entirety as to Old Hill Partners, Inc.; and it is further

ORDERED that the remainder of this action shall continue.

Dated: June 13, 2007

ENTER:

J.S.C.