

<b>Adler v Medley Capital LLC</b>
2020 NY Slip Op 30082(U)
January 4, 2020
Supreme Court, New York County
Docket Number: 651268/2019
Judge: Andrea Masley
Cases posted with a "30000" identifier, i.e., 2013 NY Slip Op <u>30001</u> (U), are republished from various New York State and local government sources, including the New York State Unified Court System's eCourts Service.
This opinion is uncorrected and not selected for official publication.

SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF NEW YORK: COMMERCIAL PART 48

-----X

MARILYN ADLER,  
  
Plaintiff,

INDEX NO. 651268/2019

MOTION DATE \_\_\_\_\_

- v -

MEDLEY CAPITAL LLC, MCC ADVISORS, MEDLEY SBIC  
GP, LLC, MEDLEY CAPITAL CORPORATION, MEDLEY  
MANAGEMENT INC., BROOK TAUB, and SETH TAUB,

MOTION SEQ. NO. 001

**DECISION + ORDER ON  
MOTION**

Defendants:

-----X

**MASLEY, J.:**

The following e-filed documents, listed by NYSCEF document number (Motion 001) 15, 16, 17, 18, 21, 25, 26, 27, 28, 29, 35

were read on this motion to/for DISMISS

In Motion Sequence Number (Motion) 001, defendants move, pursuant to CPLR 3211 (a) (1) and (a) (7), to dismiss the breach of contract claim plaintiff asserts in her original complaint (NYSCEF 18 [complaint]).

In opposition to Motion 001, plaintiff cross-moves to amend the complaint, pursuant to CPLR 3025 (b), to dispense with the breach of contract claim (and other claims) and, instead, assert claims of unjust enrichment and conversion and seeking an accounting. In reply, defendants oppose the cross motion on the basis that the proposed amended complaint (PAC) is incoherently drafted and request that the court direct plaintiff to file a second proposed amended complaint that contains more clearly-written factual allegations (see NYSCEF 29 [defendant's reply and opp mem]).

As plaintiff does not oppose the motion to dismiss the breach of contract claim, and does not include a breach of contract claim in the PAC, that prong of defendants' motion is granted.

Before turning to plaintiff's cross motion, the court recounts the following background from plaintiff's pleadings:

Plaintiff asserts, in the PAC (NYSCEF 26), that she was employed by defendants to manage the "Medley SBIC Fund," and undefined vehicle/entity in the PAC that "operates, in part, through the help of [a United States'] Small Business Investment Corporation [SBIC] license" which permits the licensed fund to "borrow funds" from the United States' Small Business Administration (SBA) to loan to small businesses (*id.* ¶¶ 3-4). The SBA granted a license to defendant Medley Capital LLC (Medley Cap LLC) on the condition that plaintiff maintain no less than 25% ownership in "the general partnership that owns Medley SBIC," defendant Medley SBIC GP, LLC (Medley GP) (NYSCEF ¶¶ 5-6). While it is not defined in the PAC, "Medley SBIC" seems to refer to nonparty Medley SBIC, LP (Medley LP) (*see id.* ex A [partnership agreement for Medley LP]). Medley LP is also identified as the "name of the fund" in various exhibits attached to plaintiff's PAC, which notably does not contain any bookmarks and was not submitted to the court with exhibit tabs in hard copy in contravention of the Part Rules and Commercial Division Rules (*see generally id.*).

Plaintiff asserts that the Medley LP agreement (LP Agreement) was executed by Medley GP and defendant Medley Capital Corporation (Medley Corp.) (*id.* ¶ 71). Plaintiff alleges that Medley GP was the "General Partner" of Medley LP, and that plaintiff was the "Manager" of Medley GP and was entitled to 25% of Medley LP's

management and incentive fees as 25% owner of Medley LP (see *id.* ¶¶ 22-23). She further asserts that, when the fourth equal-shareholding partner of Medley LP was terminated in March 2014, plaintiff's partnership interest and fees-percentages should have been, but were not, increased to 33.3% (*id.* ¶¶ 24-30).

Plaintiff further asserts that defendants MCC Advisors and Medley Cap LLC, investment advisors for Medley Corp., are "wholly owned by Medley LLC" (an undefined entity in the PAC and possibly a nonparty), which, in turn, "is owned approximately 20% by [defendant] Medley Management Inc." (Mgmt Inc.) (see *id.* ¶¶ 42-43).

In sum, plaintiff asserts that she was entitled to management fees and incentive fees under her variously written, oral, and amended agreements, as demonstrated in documents submitted to the SBA, which were subverted from her by defendants. While the complaint and PAC are unclear in various places, especially given plaintiff's failure to consistently use the same name for each entity to which she refers and, at times, ambiguously refers to entities with vague or undefined names, the core of plaintiff's claim is plain from the PAC and attached exhibits.

Defendants do not contend in their sur-reply papers that plaintiff has not stated a claim for unjust enrichment. Rather, they contend that the PAC is untenably incoherent. The court disagrees that the PAC is impermissibly incoherent as, despite its flaws, it is not wholly indecipherable and the basis of the unjust enrichment claim is sufficiently clear. The court notes that many of inconsistencies in the PAC and any confusion on the part of defendants can likely be corrected by simple interrogatories served pursuant to the Commercial Division Rules.

Thus, while plaintiff's PAC would benefit from some additional clarification and consistency in terms/definitions, plaintiff's cross motion to amend the complaint is granted.

Accordingly, it is

ORDERED that defendants' motion to partially dismiss the original complaint is granted; and it is further

ORDERED that plaintiff's cross motion to amend the complaint is granted and plaintiff shall file an amended complaint in the form of the document submitted as NYSCEF Document Number 26 within 7 days from the date of the court's entry of this decision and order on NYSCEF; and it is further

ORDERED that plaintiff may instead, if she elects, stipulate with defendants to submit a more clear version of the amended complaint that eliminates the inconsistent naming of entities identified in this decision within 7 days from the date of the court's entry of this decision and order on NYSCEF; and it is further

ORDERED that defendants shall answer the amended complaint within 20 days of plaintiff's filing the document on NYSCEF; and it is further

ORDERED that the parties shall appear in Part 48 for a <sup>status</sup> preliminary conference on February 26, 2020 at 12 AM/PM

1,4 /2020  
DATE

  
ANDREA MASLEY, J.S.C.

HON. ANDREA MASLEY

CHECK ONE:

<input type="checkbox"/>	CASE DISPOSED	<input type="checkbox"/>	DENIED
<input checked="" type="checkbox"/>	GRANTED		
<input type="checkbox"/>	SETTLE ORDER		
<input type="checkbox"/>	INCLUDES TRANSFER/REASSIGN		

<input checked="" type="checkbox"/>	NON-FINAL DISPOSITION	<input type="checkbox"/>	OTHER
<input type="checkbox"/>	GRANTED IN PART		
<input type="checkbox"/>	SUBMIT ORDER		
<input type="checkbox"/>	FIDUCIARY APPOINTMENT	<input type="checkbox"/>	REFERENCE

APPLICATION:

CHECK IF APPROPRIATE: