

**NW Media Holdings Corp. v IBT Media Inc.**

2023 NY Slip Op 30875(U)

March 22, 2023

Supreme Court, New York County

Docket Number: Index No. 652344/2022

Judge: Melissa Crane

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This opinion is uncorrected and not selected for official publication.

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

**PRESENT: HON. MELISSA A. CRANE PART 60M**

*Justice*

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NW MEDIA HOLDINGS CORP., NEWSWEEK  
LLC,NEWSWEEK DIGITAL LLC,NEWSWEEK MAGAZINE  
LLC,NEWSWEEK PUBLISHING LLC,NW DIGITAL LLC,NW  
MAGAZINE LLC,

Plaintiff,

- v -

IBT MEDIA INC.,OLIVET UNIVERSITY, WORLD OLIVET  
ASSEMBLY, INC.,ETIENNE UZAC, DAVID JANG,  
YOUNSEOK CHOI,

Defendant.

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**INDEX NO.** 652344/2022  
**MOTION DATE** 12/15/2022  
**MOTION SEQ. NO.** 008

**DECISION + ORDER ON  
MOTION**

The following e-filed documents, listed by NYSCEF document number (Motion 008) 65, 66, 67, 68, 69, 88, 97, 98, 99, 117

were read on this motion to/for DISMISS.

In Motion Seq. No. 08, Defendant Younseok Choi a/k/a Titus Choi (“Defendant” or “Choi”) moves, pursuant to CPLR 3211(a)(7), to dismiss the complaint’s causes of action for conversion, trespass to chattels, and conspiracy against him.

For the following reasons, Defendant’s motion to dismiss in this action, *NW Media Holdings Corp., et al. v IBT Media Inc., et al.*, is granted in part and denied in part.<sup>1</sup>

**FACTUAL AND PROCEDURAL BACKGROUND**

This action is one of a series of cases between the former and current owners of the magazine and media business Newsweek. The complaint in this case alleges that after Plaintiff NW Media Holdings Corp. (“NW Media”) purchased Newsweek from Defendant IBT Media Inc.

<sup>1</sup> Choi also moved, using the same memorandum in support, in the related *Pragad v Davis* action, Index No. 652334/2022, to dismiss Pragad’s claim for aiding and abetting breach of fiduciary duty claim against him. The court already denied Choi’s motion, MS 05, in the *Pragad* action.

(“IBT”), the Defendants conspired to destroy millions of pages of Newsweek data on a Google Workspace (“Workspace”) in contravention of a litigation hold.

In particular, the complaint alleges that following the separation of IBT and Newsweek, Newsweek continued to maintain data for both companies in the “Newsweek Google Workspace” that is “exclusively owned by Newsweek” (Complaint, ¶ 141 n 9 [NYSCEF Doc. No. 68]). Plaintiffs allege that “[a]t all relevant times, Plaintiffs had a possessory right and interest in the electronic data, including all user accounts, emails, and documents stored in the Newsweek Google Workspace” (Complaint, ¶ 200). Nevertheless, Plaintiffs allege that current IBT chief executive officer Jonathan Davis (“Davis”) and IBT employee Choi continued to have access to the Workspace following the sale of Newsweek, despite NW Media not employing them (*see* Complaint, ¶¶ 145, 151). Plaintiffs further allege that after Newsweek issued a litigation hold in August 2020, Defendant David Jang (“Jang”)<sup>2</sup> directed Defendant Etienne Uzac (“Uzac”)—the former chief executive officer of IBT—to “orchestrate the deletion of [problematic] documents and information from IBT accounts located in Newsweek’s Google Workspace” (Complaint, ¶¶ 143-145).

Plaintiffs allege that after Davis first used his IBT account credentials to access and export data, the “IBT conspirators” directed the deletion of documents and communications “associated with Newsweek’s former management team” (Complaint, ¶¶ 146-150). Specifically, on August 21, 2020, Davis allegedly directed Choi to “‘clean up’ the files,” and Choi’s IBT account subsequently logged into the Workspace and “deleted 271 user accounts and all of their contents”

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<sup>2</sup> Jang’s role is of limited relevance for purposes of this motion. For context, the complaint alleges that Jang is a “pastor and the founder of his own Christian sect called the Community” who allegedly has “close ties and effective control over [] companies owned by Community members, such as IBT” (Complaint, ¶ 29). The complaint alleges that, following the sale of Newsweek to NW Media, NW Media incurred “fees and costs related to threatened legal actions arising out of acts taken under IBT’s former management” (Complaint, ¶ 13). It is unclear what litigation the August 2020 litigation hold was imposed for, but the complaint generally alleges that Jang directed the deletion of records that “might cause harm or embarrassment to him or his Church or subject IBT to liability” (Complaint, ¶ 16).

(Complaint, ¶¶ 151-152, 202). Then, on August 24, 2020, “Choi separately deleted the user accounts associated with [Uzac] (e.uzac@ibt.com), who was the CEO and President of IBT during much of the period it owned and operated Newsweek, and Marion Kim (marion@ibt.com), IBT’s Director of Finance and CFO during the same period” (Complaint, ¶ 153). Overall, Choi allegedly deleted approximately 1.8 terabytes’ worth of data at the direction of Jang and Davis (Complaint, ¶¶ 154, 157).

Plaintiffs subsequently filed the complaint. The complaint alleges causes of action against Choi for conversion (Count III), trespass to chattels (Count V), conspiracy as to conversion (Count IV), and conspiracy as to trespass to chattels (Count VI).

### **DISCUSSION**

Choi has moved to dismiss all causes of action against him pursuant to CPLR 3211(a)(7) for failure to state a cause of action. The court grants dismissal as to the trespass to chattels claim and the associated conspiracy, but otherwise the court denies dismissal.

#### 1. Trespass to Chattels

Choi first moves to dismiss the claim for trespass to chattels on the basis that the allegations within the complaint, if anything, allege conversion rather than trespass to chattels. Choi is correct. In order to state a cause of action for trespass to chattels, a plaintiff must allege “(1) intent, (2) physical interference with (3) possession (4) resulting in harm” (*DeAngelis v Corzine*, 17 F Supp 3d 270, 283 [SDNY 2014]; *Lavazza Premium Coffees Corp. v Prime Line Distributors Inc.*, 575 F Supp 3d 445, 474 [SDNY 2021] [“Under New York Law, [a] trespass to chattel occurs when a party intentionally damages or interferes with the use of property belonging to another.”] [citations and internal quotation marks omitted]; *School of Visual Arts v Kuprewicz*, 3 Misc 3d 278, 281 [Sup Ct, NY County 2003]). A plaintiff must show that the “condition, quality, or value” of the chattel

was “diminished” as a result of the defendant’s actions or that the plaintiff was deprived of use of the chattel “for a substantial time” (*Twin Sec., Inc. v Advocate & Lichtenstein, LLP*, 113 AD3d 565, 565 [1st Dept 2014]; *School of Visual Arts*, 3 Misc 3d at 281).

A cause of action for trespass to chattels “overlaps with a claim for conversion” (*Lavazza*, 575 F Supp 3d at 474). However, the two causes of action are distinct. Allegations that the defendant “merely interfered with the plaintiff’s property” are “properly construed as an action to recover for trespass,” while allegations of “destruction or taking of the property” amount to a claim for conversion (*see Douglas v Abrams Children Books*, 2014 WL 12909009, \*7 [SDNY Sept 26, 2014] [granting in part motion to dismiss, finding the complaint “state[s] a claim for conversion, not an ‘injurious trespass of Chattel’”] [citing *Sporn v MCA Records*, 58 NY2d 482 (1983)]; *see also Manhattan Sports Restaurants of America, LLC v Lieu*, 137 AD3d 504, 504 [1st Dept 2016] [finding allegations stated cause of action for trespass to chattels but not conversion since it was “not alleged that defendant exercised dominion and control” over the chattels]; *Fischkoff v Iovance Biotherapeutics, Inc.*, 339 F Supp 3d 408, 414 [SDNY 2018] [finding that “pure copying of electronic files without more” did not state a claim for conversion]).

Plaintiffs contend that allegations of destruction of data suffice to state a claim for trespass to chattels in addition to their claim for conversion (*see Mem. in Opposition*, NYSCEF Doc. No. 97, p. 41). However, Plaintiffs cite no appellate authority in support of this proposition. Instead, they rely on New York state trial court and federal court orders. Meanwhile, a review of these cases actually sharpens the distinction between the two causes of action in situations involving electronic data. Accordingly, “trespass to chattels” in the context of electronic data often include interference that causes damage to computer systems or involves the sending of unsolicited content (*see e.g. Spa World Corp. v Lipschik*, 2010 WL 11632681, \*13 [EDNY Sept 9, 2010] [denying

dismissal of trespass to chattels claim where defendants allegedly installed malicious Trojan virus on plaintiff's website, requiring a shutdown of the computer system]; *School of Visual Arts v Kuprewicz*, 3 Misc 3d 278, 281 [Sup Ct, NY County 2003] [denying dismissal of trespass to chattels claim where defendant caused "unsolicited e-mails" to be sent to plaintiff which "depleted hard disk space, drained processing power, and adversely affected other system resources"]).

Plaintiffs do cite cases in which trespass to chattels claims have proceeded involving the mere deletion of data. Rather, these cases also involved interference with physical devices containing that data [see e.g. *Banach v The Dedalus Foundation, Inc.*, 2012 WL 251567 [Sup Ct, NY County Jan 18, 2012] [denying motion to dismiss trespass to chattel counterclaim where defendant alleged that plaintiff "intentionally deleted hard drive data on the computers it provided her to work from home"]; *Cohen v Gerson Lehrman Group, Inc.*, 2011 WL 4336683, at \*\*7-9 [SDNY Sept 15, 2022] [denying motion for summary judgment dismissing conversion and trespass to chattels claims where the defendant allegedly "engaged in unauthorized access to his workplace computer and unlawfully deleted or modified the defendant's files"]; *Advanstar Communications Inc. v Pollard*, 2014 WL 4613020, \*2-3 [Sup Ct, NY County Sept 16, 2014] [denying dismissal of trespass to chattels claim where counterclaim defendants allegedly "remotely wiped" his iPhone]].

Unlike in these cases, Plaintiffs have not alleged that Choi interfered with the Workspace in such a way that impinged its functioning, that Choi inserted unwanted data or that Choi deleted data directly off of Plaintiffs' own devices. Rather, the allegations in this Complaint are simply that Choi deleted 1.8 terabytes' worth of data off of the Workspace to the complete deprivation of Plaintiffs' access (see Complaint, ¶¶ 154, 202, and 221). If anything, that is a cause of action for conversion, not trespass to chattels (see *Douglas v Abrams Children Books*, 2014 WL 12909009, \*7 [SDNY Sept 26, 2014]).

## 2. Conversion

The court denies Defendant's motion to dismiss Plaintiffs' cause of action for conversion against him. To state a cause of action for conversion, a plaintiff is required to allege that they had legal ownership or a "superior right of possession" and that the defendant interfered with their right of possession (*Grocery Delivery E-Servs. USA, Inc. v Flynn*, 201 AD3d 585, 586 [1st Dept 2022]; *Abrams v Pecile*, 115 AD3d 565, 565-566 [1st Dept 2014]; *NY Medscan, LLC v JC-Duggan Inc.*, 40 AD3d 536, 537 [1st Dept 2007]; *Lemle v Lemle*, 92 AD3d 494, 497 [1st Dept 2012] ["Conversion is the unauthorized assumption and exercise of the right of ownership over another's property to the exclusion of the owner's rights."]). As discussed, a plaintiff states a cause of action for conversion, rather than the related cause of action for trespass to chattels, where a plaintiff alleges that the defendant actually destroyed the property rather than just interfered with it (*Douglas v Abrams Children Books*, 2014 WL 12909009, \*7 [SDNY Sept 26, 2014] [citing *Sporn v MCA Records*, 58 NY2d 482, 487-488 (1983)]; *cf. also Mountain & Isles, LLC v Gillz, LLC*, 2019 N.Y. Slip Op. 30872[U], 7 [Sup Ct, New York County 2019] [noting that a conversion claim involving intangible property requires allegations that the plaintiff's rights were infringed somehow, such as being "excluded from using its intangible property"]).

Here, Defendant has failed to meet his burden on this motion to dismiss. Plaintiffs allege that they "had a possessory right and interest in the electronic data, including all user accounts, emails, and documents stored in the Newsweek Google Workspace" and that the "data and information contained in the Newsweek Google Workspace is exclusively owned by Newsweek" (Complaint, ¶¶ 141 n 9, 200). Plaintiffs further allege that "[n]one of the Defendants had the authority to destroy Plaintiff's' business records or take them for their own use" (Complaint, ¶ 207) and that on August 21 and 24, 2020, Choi "accessed, exercised control over, and destroyed

electronic data in the Newsweek Google Workspace without permission” (Complaint, ¶ 202). These allegations are sufficient to state a cause of action for conversion.

Defendant’s arguments to the contrary are unavailing. First, Defendant argues that the complaint does not actually allege that any of the Plaintiffs had a possessory interest in the data on the Workspace (Opening Mem., NYSCEF Doc. No. 66, p. 8). Defendant highlights the complaint’s allegation that “the data and information contained in the Newsweek Google Workspace is exclusively owned by Newsweek” (*id.*; Complaint, ¶ 141, n 9). While Defendant is correct that Plaintiffs do not technically include an entity called simply “Newsweek,” the complaint appears in at least one place to use the term “Newsweek” to refer to Newsweek LLC, which is one of the plaintiff entities (*see e.g.* Complaint, ¶ 23 [“Plaintiff Newsweek LLC is a New York limited liability company . . . Newsweek was formed in connection with the sale of Newsweek magazine.”]). Second, the complaint explicitly alleges that “Plaintiffs” in general “had a possessory right and interest” in the data stored in the Workspace (Complaint, ¶ 200). Therefore, Defendant has not established entitlement to dismissal for failure to state a claim because, even if the complaint does allege that “Newsweek” had an interest, it also alleges that Plaintiffs in general had an interest in the data in the Workspace. Indeed, over all four cases, both sides have claimed a sole legal right to the data. Which side legally has that right is not subject to adjudication at this juncture.

Nor does the court accept Defendant’s argument that Plaintiffs fail to allege that they were “exclusive” owners of the data (Opening Mem., p. 9). Nowhere in Defendant’s opening or reply memoranda does Defendant cite any case law to support the argument that Plaintiffs need to allege an exclusive interest in the data to maintain a claim of conversion. Contrary to Defendant’s assertion, Plaintiffs only are required to allege that they had legal ownership or a “superior right

of possession” (*Grocery Delivery E–Services USA, Inc. v Flynn*, 201 AD3d 585, 586 [1st Dept 2022] [emphasis added]; *NY Medscan, LLC v JC-Duggan Inc.*, 40 AD3d 536, 537 [1st Dept 2007]; *see also Abrams v Pecile*, 115 AD3d 565, 565-566 [1st Dept 2014] [finding motion court should not have dismissed conversion claim because “Plaintiff has a possessory right or interest in the property . . . and there is evidence that defendant has interfered with that right by refusing a demand for the goods”] [emphasis added]). In any event, as discussed above, Plaintiffs have alleged that the data contained on the Workspace was “exclusively” owned by Newsweek (Complaint, ¶ 141, n 9). To the extent Defendant argues that allegations in the complaint “contradict” this claim of exclusive ownership (Reply Mem., NYSCEF Doc. No. 117, p. 6), these arguments present questions of fact not suited to adjudication on this motion (*see Abrams*, 115 AD3d at 566 [reversing summary judgment dismissal of conversion claim based on issue of fact as to whether property was jointly owned marital property]). Because Plaintiffs have alleged that they were exclusive owners of the Workspace data and had a possessory right to the data that Choi allegedly destroyed, Plaintiffs have stated a cause of action for conversion.

Similarly, the court rejects Defendant’s argument that dismissal is warranted because he was authorized to delete the information (Opening Mem., p. 10). Choi’s attorney argues that Choi “was expressly authorized by a 50% owner, director, and officer of NW Media to delete the user accounts at issue” (*id.*). Even though Davis, who was and remains a 50% owner of NW Media, allegedly directed Choi to delete the data (Complaint, ¶ 202), Plaintiffs have sufficiently alleged that they had a superior possessory interest in the material that Choi allegedly permanently deleted. Defendant has provided no case law to support the proposition that one 50% owner has the unfettered right to permanently destroy—themselves or through an agent—data in which the other 50% owner has a possessory interest.

### 3. The Conspiracy Claims

Defendant additionally moves to dismiss Plaintiffs' causes of action for conspiracy.

Defendant is correct that civil conspiracy is not an independent tort (*Mamoon v Dot Net Inc.*, 135 AD3d 656, 658 [1st Dept 2016]). Therefore, to the extent Plaintiffs' cause of action for conspiracy against Choi is based on trespass to chattels that the court has dismissed, the conspiracy cause of action is also dismissed (*see Abacus Federal Savings Bank v Lim*, 75 AD3d 472, 474 [1st Dept 2010]).

However, to the extent that Plaintiffs assert a cause of action for conspiracy based on the alleged conversion, Defendant's motion to dismiss is denied. The conversion claim that survives this motion to dismiss can serve as the underlying tort for the purposes of Plaintiffs' conspiracy claim.

A claim for civil conspiracy requires a plaintiff to plead, in addition to a primary underlying tort, "(1) an agreement between two or more parties; (2) an overt act in furtherance of the agreement; (3) the parties' intentional participation in the furtherance of a plan or purpose; and (4) resulting damage or injury" (*Abacus Federal Savings Bank*, 75 AD3d at 474). Defendant argues that Plaintiffs fail to meet this burden because the complaint does not allege that Choi "even communicated with Jang or Uzac about the Workspace accounts, let alone that he reached some relevant agreement with them" (Opening Mem., p. 12). However, Defendant has not provided any case law suggesting that Plaintiffs were required to allege specifically that Choi communicated with every other co-conspirator in order to allege that Choi was part of the overall conspiracy. Defendant acknowledges that the complaint alleges that "Davis, Choi's boss, directed him to delete accounts in [the] Workspace" (Opening Mem., p. 12 [citing Complaint, ¶ 151]). Further, the complaint alleges that Jang directed Uzac to orchestrate the deletion of documents and information

and that Uzac then coordinated with Davis to carry out the deletions” (Complaint, ¶ 145). This is sufficient to raise an inference of an agreement between these parties (*see FIA Leveraged Fund Ltd. v Grant Thornton LLP*, 150 AD3d 492, 495 [1st Dept 2017]).

Additionally, the complaint alleges colorable facts from which the court can infer, at this motion to dismiss stage, that Choi intentionally participated in furtherance of the alleged conspiracy by deleting data from the Workspace. Defendant is correct that Plaintiffs are required to allege “intentional participation in the furtherance of a plan or purpose” (*Cohen Bros. Realty Corp. v Mapes*, 181 AD3d 401, 404 [1st Dept 2020]). However, contrary to Defendant’s argument, the complaint’s allegation that “Choi was directed to ‘clean up’ the files by deleting any accounts that might contain information damaging to Jang or the Church” (Complaint, ¶ 151) is sufficient, for purposes of this motion, to allege that Choi was aware of the purpose of the deletions. As such, Defendant has failed to meet his burden to establish entitlement to dismissal at this juncture.

Lastly, Plaintiffs have sufficiently alleged that they incurred damages from the conspiracy through, among other things, the lost “value of the data destroyed,” as well as through the cost of a forensic investigation, and “related costs of [their] attempts to recover (unsuccessfully) the data destroyed by Defendants” (Complaint, ¶ 217).

The court has considered the parties’ remaining contentions and finds them unavailing.

Accordingly, it is

**ORDERED** that Defendant Choi’s motion, Motion Seq. No. 08, is granted to the extent that the causes of action for trespass to chattels (Count V) and conspiracy to trespass to chattels (Count VI) are dismissed; and it is further

**ORDERED** that Defendant’s motion to dismiss is otherwise denied in its entirety; and it is further

**ORDERED** that Defendant Choi must serve an answer to the complaint within 20 days of the date of this decision and order.

03/22/2023  
**DATE**

  
**MELISSA CRANE, J.S.C.**

<b>CHECK ONE:</b>	<input type="checkbox"/> CASE DISPOSED	<input type="checkbox"/> DENIED	<input checked="" type="checkbox"/> NON-FINAL DISPOSITION	<input type="checkbox"/> OTHER
<b>APPLICATION:</b>	<input type="checkbox"/> GRANTED		<input checked="" type="checkbox"/> GRANTED IN PART	
<b>CHECK IF APPROPRIATE:</b>	<input type="checkbox"/> SETTLE ORDER		<input type="checkbox"/> SUBMIT ORDER	
	<input type="checkbox"/> INCLUDES TRANSFER/REASSIGN		<input type="checkbox"/> FIDUCIARY APPOINTMENT	<input type="checkbox"/> REFERENCE