

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

2023 NY Slip Op 33366(U)

September 29, 2023

Supreme Court, New York County

Docket Number: Index No. 652344/2022

Judge: Melissa Crane

Cases posted with a "30000" identifier, i.e., 2013 NY Slip Op 30001(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  
NEW YORK COUNTY**

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

*Justice*

-----X

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

INDEX NO. 652344/2022

MOTION DATE 02/10/2023

MOTION SEQ. NO. 009

Plaintiff,

- v -

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

**DECISION + ORDER ON  
MOTION**

Defendant.

-----X

The following e-filed documents, listed by NYSCEF document number (Motion 009) 137, 138, 139, 147, 148

were read on this motion to/for DISMISSAL.

In Motion Sequence No. 09, Defendant David Jang (“Jang”) moves pursuant to CPLR 3211(a)(3) and (a)(7) to dismiss the complaint’s causes of action against him. For the following reasons, Jang’s motion is granted in its entirety.

**FACTUAL AND PROCEDURAL BACKGROUND**

The allegations against Jang relate primarily to his alleged role in Defendant IBT Media Inc.’s (“IBT”) alleged misconduct during IBT’s ownership of the magazine Newsweek, as well as Defendants’ alleged conversion of Newsweek documents contained on a Newsweek Google Workspace (“Workspace”). The complaint alleges that Jang is a South Korean-American pastor and founder of a Christian sect called the Community (Complaint, NYSCEF Doc. No. 2, ¶ 29). Jang allegedly has “created a large network of entities associated with the Community,” one of

which is the news organization IBT (*id.*). Jang also is the founder of Olivet University<sup>1</sup> (*id.*). The complaint alleges that “[t]hroughout the years, IBT’s staff has been largely comprised of Community members and students from Olivet University” (*id.*, ¶ 31).

The complaint alleges that Defendant Etienne Uzac (“Uzac”) and non-party Jonathan Davis (“Davis”)<sup>2</sup> are both members of the Community with “close ties to Jang” (*id.*, ¶¶ 30, 35). Uzac was IBT’s CEO from 2006 through at least 2018 (*id.*, ¶ 30). Davis is currently IBT’s CEO (*id.*, ¶ 35). Plaintiffs allege, however, that IBT was and remains controlled by Jang (*id.*, ¶ 48). According to the complaint, IBT is an alter ego of Uzac, Davis, Jang, Olivet University, and the World Olivet Assembly, and Jang, Uzac, and Davis “exercised day-to-day control over IBT” during the relevant time period (*id.*, ¶¶ 75, 77). In August 2013, IBT purchased the magazine Newsweek (*id.*, ¶ 88). The complaint alleges that Uzac and Davis “nominally managed” Newsweek, but that Jang was the “leader by proxy” (*id.*, ¶ 93). The complaint further alleges that, under this leadership, Newsweek suffered a significant amount of financial damage and reputational harm, including as the result of a fraud and money-laundering investigation by the New York County District Attorney related to Olivet University (*id.*, ¶¶ 91-92, 95).

In 2018, IBT sold Newsweek to Plaintiff NW Media Holdings Corp. (“NW Media”), which is jointly owned by Pragad and Davis (*id.*, ¶¶ 106-07). However, following that 2018 separation, Newsweek “continued to maintain digital records for both companies in Newsweek’s Google Workspace” (*id.*, ¶ 141). The complaint alleges that in August 2020, Newsweek issued a litigation hold, and Defendants Jang and Uzac subsequently “orchestrated the mass deletion of emails,

---

<sup>1</sup> Olivet University previously was a defendant in this action, but the court granted Olivet University’s motion to dismiss in its entirety on February 2, 2023 (Decision and Order on Olivet University Motion to Dismiss, NYSCEF Doc. No. 141).

<sup>2</sup> Davis is not party to this action but was previously a defendant in the related *Pragad v Davis, et al.* (652334/2022) action (“Pragad Action”).

documents, and other data from the Newsweek Google Workspace” after being put on notice of the litigation hold (*id.*, ¶¶ 143, 213). However, the complaint does not allege that Jang himself deleted any documents. Rather, the complaint alleges that “Uzac was purportedly directed by Jang to orchestrate the deletion of such documents,” and then Uzac “coordinated with [Davis] to carry out the deletions” (*id.*, ¶ 145). Davis then allegedly accessed the Workspace, ran searches for documents covered by the litigation hold, exported files, and downloaded those files (*id.*, ¶¶ 146-149). After Davis downloaded documents from the Workspace, Defendant Younseok Choi (a/k/a Titus Choi) (“Choi”), an IBT employee, allegedly “was directed to ‘clean up’ the files by deleting any accounts that might contain information damaging to Jang or the Church” (*id.*, ¶¶ 32, 151). Choi then allegedly logged onto the Workspace on August 21, 2020 and August 24, 2020, and ultimately deleted approximately 1.8 terabytes’ worth of data (*id.*, ¶¶ 151-54). The complaint alleges that the mass destruction was “carried out **at Jang’s direction** to cover up ties between IBT and the Community and evidence related to a host of misconduct on the part of the Defendants” (*id.*, ¶ 157 [emphasis added]).

Plaintiffs filed the complaint on July 6, 2022. The complaint alleges causes of action against Jang for contractual indemnification (Count I) and unjust enrichment (Count II) based on the theory that he is an alter ego of IBT, aiding and abetting conversion (Count III), conspiracy to convert (Count IV), aiding and abetting trespass to chattels (Count V), and conspiracy to trespass (Count VI).

Subsequently, all defendants, including Jang, moved to dismiss. The court first granted IBT’s motion to dismiss (MS 05) on December 29, 2022 (Decision and Order on IBT Motion to Dismiss, NYSCEF Doc. No. 127). The court dismissed the complaint against IBT in its entirety, holding that under *Sterling Industries Inc. v Ball Bearing Pen Corp.* (298 NY 483 [1949]), Pragad

lacked the authority to commence a **direct** action—rather than a **derivative** action—in the name of NW Media over the objection of Davis, the other director of NW Media (Decision and Order on IBT Motion to Dismiss, pp. 9-11).

The court then dismissed the claims against Olivet University (MS 03) and World Olivet Assembly (MS 04) because the only claims against them were based on the theory that they were alter egos of IBT, which the court had already dismissed from the case (*see* Decision and Order on Olivet and WOA Motions to Dismiss, NYSCEF Doc. No. 141).

The court then issued orders granting in part and denying in part Choi’s (MS 08) and Uzac’s (MS 06) motions to dismiss (Decision and Order on Choi’s Motion to Dismiss, NYSCEF Doc. No. 154; Decision and Order on Uzac’s Motion to Dismiss, NYSCEF Doc. No. 155). Both Choi and Uzac moved to reargue, asserting that the *Sterling* rationale that applied to the claims against IBT also required the dismissal of the claims against them in their entirety.

However, before the court could determine the applicability of *Sterling* to Choi, Uzac, or Jang, Plaintiffs’ counsel wrote a letter to the court stating that as a result of the settlement between Pragad and Davis, “Davis is recused from participating in any decisions regarding NW Media’s litigation against IBT Media Inc.” and, therefore, “[t]he *Sterling* issue thus has been eliminated as there is no objection from anyone on the NW Media board and NW Media now has authority to pursue further litigation with IBT Media Inc.” (July 17, 2023 Letter, NYSCEF Doc. No. 190).

The court ultimately agreed with Plaintiffs, finding that because Davis dropped his objection, *Sterling* no longer barred the claims against either Choi or Uzac (July 19, 2023 Oral Argument Transcript, pp. 9-12; Supplemental Decision and Order on Choi Motion, NYSCEF Doc. No. 192; Decision and Order on Uzac Motion for Reargument, NYSCEF Doc. No. 193).

## **DISCUSSION**

Notwithstanding the complex intervening procedural history, Jang's motion to dismiss pursuant to CPLR 3211(a)(3) and (a)(7) remains pending. For the following reasons, the court grants Jang's motion to dismiss in its entirety.

1. Motion to Dismiss for Lack of Authority to Sue – CPLR 3211(a)(3)

As an initial matter, the court denies Jang's motion to dismiss pursuant to CPLR 3211(a)(3). Jang's motion to dismiss joins in the arguments made by other Defendants that Plaintiffs lack authority to sue Jang under *Sterling Industries Inc. v Ball Bearing Corp.*, 298 NY 483 (1949) (Opening Mem., NYSCEF Doc. No. 138, p. 9). The court denies this portion of Jang's motion for the same reason that the court denied the Uzac and Choi motions for reargument. Namely, because Davis is no longer objecting to the NW Media direct lawsuit, there can be no *Sterling* issue with regard to Jang.

2. Motion to Dismiss for Failure to State a Cause of Action – CPLR 3211(a)(7)

Nevertheless, the court grants Jang's motion to dismiss for failure to state a cause of action.

*a. Alter Ego Causes of Action (Counts I and II)*

The court grants Jang's motion to dismiss the causes of action for contractual indemnification (Count I) and unjust enrichment (Count II). Plaintiffs allege both of these causes of action under the theory that Jang is IBT's alter ego. However, the court already has dismissed IBT from this action (*see* Decision and Order on IBT Motion to Dismiss). Therefore, these causes of action are dismissed as against Jang (*see Ferro Fabricators, Inc. v 1807-1811 Park Ave. Dev. Corp.*, 127 AD3d 479, 480 [1st Dept 2015] [“[A]lter-ego liability is not an independent cause of action.”]).

Plaintiffs' argument that the dismissal of IBT is not dispositive as against Jang because the court only dismissed IBT because the Plaintiffs lacked the authority to sue (Opposition, NYSCEF

Doc. No. 147, pp. 15-16) is not persuasive. Alter ego liability, rather than an independent cause of action, is a “theory of **recovery**” (see *2406-12 Amsterdam Associates LLC v Alianza LLC*, 136 AD3d 512, 513 [1st Dept 2016] [emphasis added]). A cause of action for piercing the corporate veil, therefore, requires allegations of wrongdoing **by the corporation** which form the basis for recovery from individual defendants (*Tap Holdings, LLC v Orix Finance Corp.*, 109 AD3d 167, 174 [1st Dept 2013] [“Piercing of the corporate veil is not a cause of action independent of that against the corporation; it is established when the facts and circumstances compel a court to impose the corporate obligation on its owners, who are otherwise shielded from liability.”]).

Here, there are no actionable allegations left in the complaint against IBT because IBT has been dismissed. Therefore, there is no IBT misconduct for which Jang can be held personally liable. Plaintiffs’ distinction between dismissal for lack of authority to sue and dismissal for failure to state a cause of action is irrelevant. For the purposes of this motion, it does not matter why the court dismissed the causes of action against IBT. All that matters is that IBT is no longer party to this action. Therefore, Jang cannot be held to answer for IBT’s alleged conduct as an alter ego.

*b. Trespass Causes of Action (Counts V and VI)*

The court also dismisses the causes of action for aiding and abetting trespass to chattels (Count V) and conspiracy to trespass (Count VI). These causes of action are based on the alleged destruction of data from the Workspace (Complaint, ¶¶ 221-25, 232-34). As the court explained in the decision and order on the Choi motion to dismiss (Decision and Order on Choi’s Motion to Dismiss, pp. 3-5) and the decision and order on the Uzac motion to dismiss (Decision and Order on Uzac’s Motion to Dismiss, pp. 3-4), if anything these allegations sound in conversion rather than trespass. In any event, because the court already dismissed these causes of action against Choi—the primary alleged tortfeasor—the causes of action must be dismissed as against the

alleged aider and abettor due to lack of an underlying tort (*see Dickinson v Igoni*, 76 AD3d 943, 945 [2d Dept 2010]; *Habberstad v Revere Securities LLC*, 183 AD3d 532, 533 [1st Dept 2020]).

*c. Conversion Causes of Action (Counts III and IV)*

The court also dismisses the causes of action for aiding and abetting conversion (Count III) and conspiracy to convert (Count IV). To state a cause of action for aiding and abetting conversion, a plaintiff must allege “the existence of a conversion by the primary tortfeasor, actual knowledge, and substantial assistance” (*William Doyle Galleries, Inc. v Stettner*, 167 AD3d 501, 505 [1st Dept 2018]). The court has already found that the complaint states a cause of action for an underlying conversion by Choi (Decision and Order on Choi’s Motion to Dismiss, pp. 6-7).

However, the court dismisses the cause of action for aiding and abetting conversion because Plaintiffs fail to sufficiently allege that Jang provided substantial assistance to Choi. In order to allege the element of substantial assistance for an aiding and abetting cause of action, a plaintiff must allege that “(1) a defendant affirmatively assists, helps conceal, or by virtue of failing to act when required to do so enables the fraud to proceed, and (2) the actions of the aider/abettor proximately caused the harm on which the primary liability is predicated” (*Stanfield Offshore Leveraged Assets, Ltd. v Metropolitan Life Ins. Co.*, 64 AD3d 472, 476 [1st Dept 2009]; *see also Stettner*, 167 AD3d at 506 [denying dismissal of aiding and abetting cause of action, finding that plaintiff sufficiently alleged substantial assistance by alleging that defendant “enabled [the] fraudulent conversion” and that the plaintiff would not have released the converted property “**but for** the verbal and written assurances provided by [defendant]”] [emphasis added]). Additionally, merely urging a party to engage in misconduct does not amount to “substantial assistance” (*see Sanford/Kissena Owners Corp. v Daral Properties, LLC*, 84 AD3d 1210, 1212 [2d Dept 2011] [granting motion to dismiss aiding and abetting breach of fiduciary duty claim, finding that the

“conclusory allegation” that defendant had “urged” the primary tortfeasor to induce the plaintiff to sign an agreement was “insufficient to establish the element of substantial assistance”).

The complaint generally alleges that Jang **directed** other Defendants to delete data from the Workspace (*see* Complaint, ¶ 157 [“The mass destruction was carried out at Jang’s direction to cover up ties between IBT and the Community and evidence related to a host of misconduct on the part of the Defendants.”]; *id.*, ¶ 204 [“Defendant Jang purportedly directed the destruction of any and all potentially problematic documents or communications that might cause legal or reputational harm to Olivet University or the Community . . . Jang conspired with the other individual Defendants and provided substantial assistance in the form of a direct command and plan for the deletion of Plaintiffs’ data.”]). However, that is where the allegations against Jang cease. Plaintiffs fail to allege that Jang took any actions that proximately caused the deletion of the documents. Rather, the complaint alleges that Jang essentially just “urged” that the deletion be done (*see Sanford/Kissena*, 84 AD3d at 1212), and speculates as to Jang’s motives. The allegations against Jang are clearly distinguishable from those against Choi, who allegedly deleted the documents himself (Complaint, ¶ 202) or Uzac and Davis, who allegedly coordinated in identifying the documents for Choi to delete (*id.*, ¶ 206). Therefore, Plaintiffs have failed to adequately allege substantial assistance, requiring dismissal of this cause of action.

Plaintiffs’ reliance on *Sayles v Ferone* (137 AD3d 486 [1st Dept 2016]) is misplaced. In *Sayles*, the court found that a complaint stated a cause of action against an attorney for aiding and abetting conversion of funds related to the sale of property by “directing the buyer to wire the sale proceeds into [an] account at a small out-of-state bank, rather than depositing the proffered check into his escrow account” (*id.* at \*1). That case only further illustrates the need for a plaintiff to establish that an aider and abettor defendant’s assistance was a proximate cause of the conversion.

In *Sayles*, the attorney’s alleged directions very directly caused the deposit of funds into a different account than the one in which they should have been deposited. The situation is different here, where the allegation that Jang directed that documents be deleted is bereft of any accompanying allegations that Jang took any particular actions to actually effectuate his direction. Rather, the complaint merely vaguely concludes that Jang “provided substantial assistance in the form of a direct command and plan for the deletion of Plaintiffs’ data” (Complaint, ¶ 204). This is insufficient (*see Barnes v Hodge*, 118 AD3d 633, 633 [1st Dept 2014] [“Although on a motion to dismiss plaintiffs’ allegations are presumed to be true and accorded every favorable inference, conclusory allegations—claims consisting of bare legal conclusions with no factual specificity—are insufficient to survive a motion to dismiss.”] [internal citation and quotation marks omitted]). Therefore, the cause of action for aiding and abetting conversion is dismissed.

The court also grants Jang’s motion to dismiss the cause of action for conspiracy to convert. In order to state a cause of action for civil conspiracy, a plaintiff must allege an “underlying tort,” as well as “agreement among the conspirators, an overt act in furtherance of the agreement, intentional participation by the conspirators in furtherance of a plan or purpose, and damages” (*Kovkov v Law Firm of Dayrel Sewell, PLLC*, 182 AD3d 418, 418-19 [1st Dept 2020], *citing Abacus Fed. Sav. Bank v Lim*, 75 AD3d 472, 474 [1st Dept 2010]). Here, the complaint alleges only that Jang “acted in furtherance of the scheme by directing Uzac and Davis to destroy the documents” (Complaint, ¶ 214). This allegation does not amount to an overt act sufficient for liability (*cf. Errant Gene Therapeutics, LLC v Sloan–Kettering Institute for Cancer Research*, 174 AD3d 473, 475 [1st Dept 2019] [finding that plaintiff had sufficiently alleged overt acts by defendant in furtherance of a conspiracy by alleging that defendant had “attended secret meetings

. . . to discuss surreptitiously obtaining plaintiff’s research for [their own] use”). Therefore, the cause of action for conspiracy to convert is dismissed.

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

**CONCLUSION**

Accordingly, it is

**ORDERED** that Jang’s motion to dismiss (MS 09) is granted in its entirety, and the causes of action against him (Counts I, II, III, IV, V, and VI) are dismissed.

09/29/2023  
DATE

  
MELISSA CRANE, J.S.C.

CHECK ONE:	<input type="checkbox"/> CASE DISPOSED	<input type="checkbox"/> DENIED	<input checked="" type="checkbox"/> NON-FINAL DISPOSITION	<input type="checkbox"/> OTHER
APPLICATION:	<input checked="" type="checkbox"/> GRANTED		<input type="checkbox"/> GRANTED IN PART	
CHECK IF APPROPRIATE:	<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