

**Jefferies Leveraged Credit Prods., LLC v Invictus
Global Mgt., LLC**

2024 NY Slip Op 32620(U)

July 9, 2024

Supreme Court, New York County

Docket Number: Index No. 654677/2022

Judge: Margaret A. Chan

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SUPREME COURT OF THE STATE OF NEW YORK
 COUNTY OF NEW YORK: COMMERCIAL DIVISION PART 49M

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JEFFERIES LEVERAGED CREDIT PRODUCTS, LLC, Plaintiff, - v - INVICTUS GLOBAL MANAGEMENT, LLC, INVICTUS SPECIAL SITUATIONS I GP, LLC, INVICTUS SPECIAL SITUATIONS MASTER I, LP, TREO VITUS GP, LLC, and TREO ASSET MANAGEMENT LLC Defendants.	<table border="0"> <tr> <td style="width: 150px;">INDEX NO.</td> <td><u>654677/2022</u></td> </tr> <tr> <td>MOTION DATE</td> <td><u>03/08/2024, 04/01/2024</u></td> </tr> <tr> <td>MOTION SEQ. NO.</td> <td><u>002, 003</u></td> </tr> </table> <p style="text-align: center;">DECISION + ORDER ON MOTION</p>	INDEX NO.	<u>654677/2022</u>	MOTION DATE	<u>03/08/2024, 04/01/2024</u>	MOTION SEQ. NO.	<u>002, 003</u>
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HON. MARGARET A. CHAN:

The following e-filed documents, listed by NYSCEF document number (Motion 002) 14, 15, 16, 17, 18, 19, 23, 39, 40, 41, 42, 44, 45, 46
 were read on this motion to/for DISMISS.

The following e-filed documents, listed by NYSCEF document number (Motion 003) 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, 36, 37, 38, 43, 48, 49, 50, 51
 were read on this motion to/for DISMISS.

Plaintiff Jefferies Leveraged Credit Products, LLC (plaintiff or Jefferies) brings this action against defendants Invictus Global Management, LLC (Invictus Global), Invictus Special Situations I GP, LLC (IGP, and together with Invictus Global, the Invictus Defendants), Invictus Special Situations Master I, LP (Master Fund), TREO Vitus GP, LLC (TREO GP), and TREO Asset Management LLC (together with TREO GP, the TREO Defendants, and along with IGP, Movants) (collectively, defendants), in connection with defendants' purported renegeing on a binding contractual commitment to purchase certain bankruptcy claims from Jefferies (*see* NYSCEF # 17 – FAC).¹ Presently before the court are two motions. In MS002, IGP moves for an order dismissing the FAC pursuant to CPLR 3211(a)(7) (NYSCEF # 14). And in MS003 the TREO Defendants move for an order dismissing

¹ The FAC was originally filed while this matter was pending before the United States District Court for the Southern District of New York (*see* NYSCEF # 6 at 10, SDNY ECF Dkt. 37). After the FAC was filed, plaintiff filed an unopposed motion to remand, which the District Court granted on January 4, 2024 (*see id.* at 1). Although it was never formally filed on this court's docket, the FAC is the operative pleading in this action. For ease of reference, citations to the FAC are drawn from the copy submitted by IGP as part of its motion.

the FAC pursuant to CPLR 3211(a)(1) and (7) (NYSCEF # 25). Jefferies opposes both motions. For the following reasons, each motion is granted in part and denied in part.

Background²

Factual Background

The parties' dispute centers around a purported agreement to purchase certain bankruptcy claims filed against LATAM Airlines Group S.A. (LATAM)³ that were held by Jefferies (the LATAM claims) (FAC ¶¶ 1-2, 31). On July 20, 2021, a Jefferies claims representative and the Invictus Defendants' co-founder and co-managing partner, Amit Patel (Patel), began discussing a potential purchase of the LATAM Claims from Jefferies (*see id.* ¶¶ 2-3, 35). The next day, on July 21, 2021, those discussion culminated in a purported agreement in which Invictus Global—acting on behalf of the Master Fund—agreed to purchase \$5 million of the LATAM Claims at a price of 68 cents on the dollar (*see id.* ¶¶ 3, 28, 35-38). The terms of this purported agreement were memorialized through instant messages on Bloomberg Terminal, which, Jefferies avers, is the common market practice (*see id.* ¶¶ 3, 32, 35; *see also* NYSCEF # 18 at Ex. 1). Two days later, on July 23, 2021, Patel acknowledged the transaction, and, on July 26, 2021, Jefferies confirmed the trade and corresponding next steps for settlement (FAC ¶¶ 39-41; *see also* NYSCEF # 18 at Exs. 2-3). With an agreement in place, Jefferies began to line up diligence information needed to settle the trade and transaction (*id.* ¶ 42).

On November 8, 2021, after not hearing from Invictus Global for several months, Jefferies' outside counsel contacted the Invictus Defendants' other co-founder and managing partner, Cindy Chen Delano (Delano), to inquire about who would be representing Invictus Global for the transaction (*see* FAC ¶¶ 6, 43-44). After Delano denied knowledge of the trade and requested additional information, Jefferies' outside counsel forwarded her the trade recap and Patel's trade acknowledgment (*see id.* ¶ 45). Between November 8, 2021, and June 28, 2022, Jefferies' outside counsel continued to provide information and documentation to Delano without her disputing the trade (*see id.* ¶¶ 46-47).

On June 8, 2022, Jefferies' outside counsel allegedly sent all transfer documentation to Patel, Delano, and Invictus Global's outside counsel (FAC ¶ 48). In response, Invictus Global's outside counsel indicated that "Invictus does not recognize this trade" (*id.*; NYSCEF # 18 at Ex. 6). Despite this response, between June 8, 2022, and November 18, 2022, Jefferies continued to reach out to Invictus Global to settle the transaction, although its efforts were largely to no avail

² The following facts are drawn from the FAC and accompanying exhibits to the parties' submissions. The facts are assumed true solely for purposes of resolving defendants' motions.

³ LATAM had filed to reorganize under Chapter 11 of the United States Bankruptcy Code on or about May 26, 2021 (FAC ¶ 31). It exited Chapter 11 bankruptcy on or about November 3, 2022 (*id.*).

(*see* FAC ¶¶ 49-51). Jefferies alleges that Invictus Global had buyer's remorse and refused to settle the trade after it determined that both it and the Master Fund would lose money on the trade (*see id.* ¶¶ 7-8, 28, 51-53). Jefferies also attributes Invictus Global's actions as motivated by a broader dispute between the Invictus Defendants and certain limited partners invested in the Master Fund who had criticized Invictus Global's performance as the Master Fund's investment manager (*see id.* ¶¶ 9, 54-55, 58).

According to the FAC, on September 29, 2023, a supermajority of limited partners in the Master Fund removed the Invictus Defendants from the Master Fund and replaced them with the TREO Defendants (FAC ¶¶ 9, 55-56). Later, on November 17, 2023, a Jefferies representative spoke with two TREO Defendant representatives to see if they would agree to have the Master Fund close the transaction (*id.* ¶ 59). On November 19, 2023, in response to a request by the TREO Defendants' request, Jefferies' outside counsel circulated materials to the TREO Defendants and reiterated the urgency in confirming whether the TREO Defendants would settle the transaction (*id.* ¶¶ 59-60). Jefferies' outside counsel then followed up with the TREO Defendants on November 20, 2023 (*id.* ¶ 61). To date, the TREO Defendants have not responded to either correspondence (*id.*). Jefferies accordingly concluded that the TREO Defendants would not have the Master Fund close the transaction (*id.* ¶¶ 10, 62).

Procedural History

Jefferies commenced this action on December 7, 2022, asserting claims for breach of contract and promissory estoppel against Invictus Global (*see* NYSCEF # 1). Invictus Global then removed the action to the United States District Court for the Southern District of New York (the District Court) on January 6, 2023 (NYSCEF # 3). On January 30, 2023, with the case pending before the District Court, Invictus Global moved to dismiss (*see* NYSCEF # 6 at 7, SDNY ECF Dkt. 9).

The District Court denied Invictus Global's motion during a September 27, 2023, hearing (NYSCEF # 31 at tr. 10:18-20). In reaching this determination, the District Court concluded that Jefferies had sufficiently pleaded the formation of a contract between Jefferies and Invictus Global, and that Jefferies was permitted to plead promissory estoppel as an alternative to its breach of contract claim (*see id.* at tr. 4:20-9:17). Invictus Global thereafter filed its Answer to the original complaint on October 25, 2023 (NYSCEF # 6 at 9, SDNY ECF Dkt. 28).

Because Invictus Global purportedly represented in its Answer that its alleged agreement to purchase the LATAM Claims was made on behalf of the Master Fund (FAC ¶¶ 8, 36), Jefferies filed the FAC on November 29, 2023 (NYSCEF # 6 at 10, SDNY ECF Dkt. 37). In the FAC, Jefferies added IGP, the Master Fund, and the TREO Defendants as defendants (*see* FAC at 1). Jefferies also added causes of action for (1) breach of contract against the Master Fund, IGP,

and TREO GP, (2) promissory estoppel against the Master Fund, IGP, and TREO GP, and (3) tortious interference with contract against the Invictus Defendants and the TREO Defendants (*see* FAC ¶¶ 75-106).

On December 29, 2023, because the FAC's new defendants destroyed diversity jurisdiction, the District Court remanded this action back to this court (NYSCEF # 6 at 1 & 12-14, SDNY ECF Dkts. 50, 64, 66, 67). Following the remand, IGP moved to dismiss the FAC on January 26, 2024, and the TREO Defendants moved to dismiss on February 15, 2024 (NYSCEF #s 14, 25). This Decision and Order followed.

Legal Standards

CPLR 3211(a) provides for various grounds under which a party may move to dismiss one or more causes of action, including when a pleading “fails to state a cause of action” (CPLR 3211 [a] [7]) or “a defense is founded upon documentary evidence” (CPLR 3211 [a] [1]). On a motion to dismiss pursuant to CPLR 3211(a)(7), the court “must accept as true the facts as alleged in the complaint and submissions in opposition to the motion, accord plaintiff[] the benefit of every possible favorable inference and determine only whether the facts as alleged fit within any cognizable legal theory” (*Whitebox Concentrated Convertible Arbitrage Partners, L.P. v Superior Well Servs., Inc.*, 20 NY3d 59, 63 [2012]). Whether a plaintiff can ultimately establish its allegations is not considered when determining a motion to dismiss (*EBC I, Inc. v Goldman, Sachs & Co.*, 5 NY3d 11, 19 [2005]). However, the court need not accept “conclusory allegations of fact or law not supported by allegations of specific fact” (*Wilson v Tully*, 243 AD2d 229, 234 [1st Dept 1998]).

Dismissal based on documentary evidence is warranted “only where ‘it has been shown that a material fact as claimed by the pleader is not a fact at all and no significant dispute exists regarding it’” (*Acquista v N.Y. Life Ins. Co.*, 285 AD2d 73, 76 [1st Dept 2001], quoting *Guggenheimer v Ginzburg*, 43 NY2d 268, 275 [1977] [alterations omitted]). But “[i]n those circumstances where the legal conclusions and factual allegations are flatly contradicted by documentary evidence, they are not presumed to be true or accorded every favorable inference” (*Morgenthau & Latham v Bank of N.Y. Co.*, 305 AD2d 74, 78 [1st Dept 2003] [internal quotation omitted]).

Discussion

In their motions, Movants first focus on Jefferies' breach of contract claim, arguing that Jefferies failed to allege (1) that IGP or TREO GP breached any contractual provision, or (2) any basis to impute liability on an agency theory (NYSCEF # 15 – IGP MOL at 8-11; NYSCEF # 45 – IGP Reply at 2-6; NYSCEF # 26 – TREO MOL at 9-12; NSYCEF # 49 – TREO Reply at 3-7). Turning to Jefferies' promissory estoppel claim, Movants each aver that Jefferies fails to allege any clear and unambiguous promise made by either IGP or TREO GP that would have

induced any reliance or actions by Jefferies (IGP MOL at 11-14; TREO MOL at 12-14; TREO Reply at 6-7). Finally, addressing Jefferies' tortious interference claim, IGP⁴ and the TREO Defendants contend that neither are "strangers" to the alleged contract, and they therefore cannot, as a matter of law, tortiously interfere with it (IGP MOL at 14-20; TREO MOL at 14-21; IGP Reply at 6-8; TREO Reply at 7-13).

Jefferies advances similar arguments in opposition to both motions. Specifically, Jefferies contends that it sufficiently alleged claims for breach of contract and promissory estoppel against both IGP and TREO GP because (a) as the Master Fund's former general partner and current general partner, respectively, IGP and TREO GP are liable for the Master Fund's partnership obligations—including preexisting obligations—and (b) the principles of agency law upon which IGP and TREO GP rely are inapplicable in the context of partnership liability (NYSCEF # 42 – Pltf IGP Opp at 16-19; NYSCEF # 48 – Pltf TREO Opp at 10-14). Turning to its tortious interference of contract claim, Jefferies argues that it has plausibly alleged that neither IGP nor the TREO Defendants were strangers to the purportedly breached contract because they acted outside the scope of their authority to act on behalf of the Master Fund (Pltf IGP Opp at 23-27; Pltf TREO Opp at 17-22).

The court considers these contentions below.

I. Jefferies' Breach of Contract and Promissory Estoppel Claims against IGP and TREO GP (Counts III and IV)

At its core, the crux of the motions to dismiss Jefferies' breach of contract and promissory estoppel claims is that, given the lack of any breaching conduct or express promise traceable to either IGP or TREO GP, Jefferies has failed to plead any basis to impute liability on an agency theory (*see* IGP MOL at 8-14; TREO MOL at 9-14; TREO Reply at 6-7). Specifically, both IGP and TREO GP aver that, as disclosed principals to the Master Fund, they cannot be held liable on contractual/quasi-contractual claims, and nothing in the FAC reflects an intent on the part of either IGP or TREO GP to be individually bound to such obligations (*see* IGP MOL at 9-11; TREO MOL at 10-11).

It is, of course, well established that officers or agents of a company are not personally liable on contractual or quasi-contractual claims if they do not purport to bind themselves individually (*Georgia Malone & Co., Inc. v Ralph Rieder*, 86 AD3d 406, 408 [1st Dept 2011]; *Pac. Carlton Dev. Corp. v 752 Pac., LLC*, 62 AD3d 677, 678 [2d Dept 2009]) [explaining that a non-signatory cannot be bound to a contract if not a party to that contract]; *Saivest Empreendimentos Imobiliarios E Participates, Ltda v Elman Invs., Inc.*, 2011 WL 11076025, at *6 [Sup Ct, NY County, Sept. 2, 2011], *mod on other grounds*, 117 AD3d 447 [1st Dept 2014]

⁴ The court notes that although Count V is alleged against both Invictus Global and IGP, only IGP moves to dismiss this claim.

[dismissing claims for breach of contract and promissory estoppel against individual defendant where nothing suggested that parties intended him to be personally bound to any contract or promise). And for this reason, agents cannot be sued for breach of contract or promissory estoppel unless there is some separate basis for the agent's liability, such as when the agent manifests a "clear and explicit" intent to be bound by the agreement (*see Natl. Union Fire Ins. Co. of Pittsburgh, PA v Chukchansi Economic Dev. Auth.*, 104 AD3d 467, 467 [1st Dept 2013] [explaining that, absent clear and explicit evidence of an intent to be bound by a payment agreement, principal's agent was not bound to the provisions contained therein]).

Jefferies does not seriously challenge these well-established legal principles. It does, however, make clear in its opposition that it is not attempting to impute contractual or quasi-contractual liability over IGP and TREO GP on an agency theory (*see* Pltf IGP Opp at 16; Pltf TREO Opp at 10). Instead, Jefferies argues, both IGP, as former general partner, and TREO GP, as current general partner, are individually liable for the Master Fund's partnership obligations (*see* Pltf IGP Opp at 16-19; Pltf TREO Opp at 10-14). The court agrees.

Pursuant to Section 26 of the Partnership Law, all partners are liable "[j]ointly for all other debts and obligations of the partnership" (Partnership Law § 26 [a] [2]; *U.S. Trust Co. of N.Y. v Bamco 18*, 183 AD2d 549, 552 [1st Dept 1992] ["The Partnership Law imposes upon the partners joint liability for debts and obligations of the partnership"]). Creditors therefore may look to the "separate property of any general partner for the whole amount of every debt, rather than the proportionate amount," but "*only if* the partnership property is 'inadequate to pay partnership debts' or it appears that there could be no effective remedy without resorting to individual property" (*see Steel v Watch Hill Mgt. Corp.*, 2011 WL 70387, at *5 [SD NY, Jan. 5, 2011, No. 08 CV 01698(GBD)], quoting *Stern v Low*, 27 AD2d 756, 756 [2d Dept 1967]; *accord Belgian Overseas Sec. Corp. v Howell Kessler Co.*, 88 AD2d 559, 559 [1st Dept 1982] ["When partnership assets are insufficient to pay partnership debts, creditors may look to the general partners to satisfy the debts"]). This framework regarding general partner liability for partnership obligations extends to a "person admitted as a partner into an existing partnership," except that such liability "shall be satisfied only out of partnership property" (*see* Partnership Law § 28).

Here, as alleged in Jefferies' newly added breach of contract and promissory estoppel claims, the Master Fund, a limited partnership, is the entity in actual breach of contract or promise to the extent Invictus Global was acting on behalf of the Master Fund at the time it allegedly reneged on the obligation and/or promise to buy the LATAM Claims (*see* FAC ¶¶ 15, 76-77, 84-85). IGP and TREO GP's inclusion in these causes of action is, in turn, in their capacity as "general partner of the Master Fund . . . liable for the contractual breaches committed by the Master Fund" (*see id.* ¶¶ 81, 88). Although it is true that the FAC fails to attribute any breaching conduct to IGP or TREO GP, such failure to allege any specific

wrongdoing by these entities is not a basis for dismissal at this juncture (*see id.* ¶¶ 81, 88). Rather, as case law makes clear, general partners *must* be named and personally served with process to the extent Jeffries seeks to enforce any judgment against them in their capacity as partners of the Master Fund (*see Tally v 885 Real Estate Assoc.*, 11 AD3d 242, 242 [1st Dept 2004] [“The individual partners, however, were never named or served with process in the proceedings which resulted in the judgment, and, accordingly, enforcement of the underlying order and judgment may not be had against them personally”]; *Vets N., Inc. v Libutti*, 278 AD2d 406, 407 [2d Dept 2000] [“Resort to the personal assets of individual partners is possible only as to those general partners who were named individually as defendants and personally served with process in the proceeding which resulted in the judgment”]).

To avoid this conclusion, Movants argue that even if a general partner can be liable for post-judgment recovery from a limited partnership, a standalone breach of contract or promissory estoppel claim against a general partner must fail unless the complaint specifically alleges that the partnership lacks sufficient assets to pay its obligations (IGP Reply at 2-5; TREO Reply at 4-6). And because the FAC lacks any allegations concerning the sufficiency of partnership assets to pay for the Master Fund’s purported contractual obligation, Movants posit that any claims against IGP and TREO GP necessarily must be dismissed (*see* IGP Reply at 3, citing *Baker v Latham Sparrowbush Assoc.*, 808 F Supp 992, 1003 [SD NY 1992] and *Tehran-Berkeley Civ. & Envtl. Engrs. v Tippets-Abbott-McCarthy-Stratton*, 888 F2d 239, 243 [2d Cir 1989]): TREO Reply at 4-5 [same]). Movants’ contention, however, misapprehends the relevant law on this issue.

Generally, under New York law, “[a] cause of action against a partnership for breach of contract does not lie against the individual partners absent an allegation that the partnership is insolvent or otherwise unable to pay its obligations” (*see Lifeline Funding, LLC v Ripka*, 114 AD3d 507, 507 [1st Dept 2014]). Put differently, absent such an allegation of partnership insolvency or inability to pay, an action solely against an individual partner based on the contractual obligation of the partnership is subject to dismissal (*see Meyer v Park S. Assoc.*, 159 AD2d 337, 339 [1st Dept 1990]). This rule of pleading, however, does not apply “[w]here a plaintiff has named the partnership as a party defendant, along with the individual partner” (*Nat’l Union Fire Ins. Co. of Pittsburgh, Pa. v Robert Christopher Assocs.*, 257 AD2d 1, 13 [1st Dept 1999], citing *Bamco 18*, 183 AD2d at 551). Indeed, in such circumstances, “it is unnecessary to aver the insufficiency of partnership assets to satisfy the claim” (*id.*; *see also Lifeline Funding*, 114 AD3d at 507 [“Hence, a plaintiff is required either to name the partnership as a party defendant, along with the individual partners, or to aver the insufficiency of partnership assets to satisfy the claim”]). Such is the case here. The FAC alleges, and Movants do not dispute, that the Master Fund is a general partnership, IGP is its former general partner, and TREO GP is its current general partner (*see* FAC ¶¶ 14-16, 17 81, 89). Accordingly, even without any allegation of the Master Fund’s insolvency or

inability to pay its obligations, both IGP and TREO GP are properly included part of Jefferies' breach of contract and promissory estoppel claims against the Master Fund (*see, e.g., Harborview Capital Partners v Solomon Invs.*, 2020 WL 5912267, at *2 [Sup Ct, NY County, Oct. 6, 2020] [denying motion to dismiss claims against individual partners where general partnership was named as a defendant in addition to partners]).⁵

Movants' motions to dismiss Counts III and IV of the FAC is denied.

II. Jefferies' Tortious Interference Claims (Counts V and VI)

Movants seek dismissal of Jefferies' tortious interference with contract claims by arguing that, *inter alia*, they are not strangers to the purportedly breached contract and, as a result, they could not have tortiously interfered with the purported contract in the absence of any allegations that they acted beyond the scope of their authority (*see* IGP MOL at 14-16; TREO MOL at 16-17; IGP Reply at 6-8; TREO Reply at 10-13). Jefferies retorts that the FAC plausibly alleges IGP procured the Master Fund's breach to protect its future business prospects, and that the TREO Defendants acted on behalf of certain investors instead of the Master Fund (*see* Pltf IGP Opp at 25-26; Pltf TREO Opp at 17-18).

To state a cause of action for tortious interference with contract, a plaintiff must allege "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" (*330 Acquisition Co., LLC v Regency Sav. Bank*, 293 AD2d 314, 315 [1st Dept 2002]). Here, the thrust of Jefferies' tortious interference claims is that Movants tortiously interfered with a purported contract that was existing between Jefferies and the Master Fund by causing the Master Fund to fail to negotiate transfer documentation in good faith and, in turn, settle the Master Fund's purchase of the LATAM Claims (FAC ¶¶ 92-106). But, as the FAC avers, these defendants were able to do so by "controll[ing] the Master Fund's operations" (*id.* ¶¶ 96, 104). And the only way they could presumably do so was by virtue of acting in their capacity as an investment manager and/or general partner of the Master Fund (*see id.* ¶¶ 28, 56, 76-82, 84-90, 96, 104). Thus, as alleged, Movants were not third parties/strangers to the alleged contract between Jefferies and the Master Fund. Rather, the totality of the FAC's allegations establish that they acted,

⁵ Movants cite to *Arrowhead Capital Fin., Ltd. v Cheyne Specialty Fin. Fund L.P.* (2015 WL 8028377 [Sup Ct, NY County, Dec. 4, 2015]) to argue that dismissal is warranted in the absence of allegations that either IGP or TREO GP breached a duty to Jeffries or that the Master Fund's assets are inadequate to pay any debt or obligation (*see* IGP Reply at 3; TREO Reply at 4). It is true that the *Arrowhead* court dismissed claims against a general partner under this reasoning (*see Arrowhead*, 2015 WL 8028377 at *18). It did so, however, without citation to any authority (binding or otherwise) in support of its determination (*see generally id.*). Accordingly, the court does not view the *Arrowhead* decision as persuasive, instructive, or otherwise warranting a different conclusion from the one set forth in the above analysis.

if at all, as agents/representatives of the Master Fund (*see UBS Sec. LLC v Highland Capital Mgt., L.P.*, 86 AD3d 469, 476-477 [1st Dept 2011] [defendant could not be considered a stranger to a contractual relationship where complaint was “thoroughly suffused with allegations” that defendant “was essentially the alter ego of the parties it induced to breach the agreements”]).

Given this conclusion, the FAC must allege that Movants acted outside the scope of its authority or personally profited from their acts (*see Shear Enters., LLC v Cohen*, 189 AD3d 423, 424 [1st Dept 2020]; *Petkanas v Kooyman*, 303 AD2d 303, 305 [1st Dept 2003]). The FAC, however, is entirely devoid of any allegations that would support even a reasonable inference that Movants—to the extent they actually induced any breach—acted outside of the scope of their agency with the Master Fund (*cf.* FAC ¶¶ 28, 36, 54, 56-57, 77-81, 85-88). Based on these allegations in the FAC, Jefferies cannot maintain a tortious interference with contract claim against them (*see Kosson v “Algaze”*, 203 AD2d 112, 113 [1st Dept 1994] [holding that individual defendants, as agents of a party to an alleged employment contract, could not tortiously interfere in the absence of evidence that they acted outside the scope of their authority]).

To avoid this outcome, Jefferies argues that the FAC supports a reasonable inference that Movants were not acting in advance of the Master Fund’s interests when they purportedly caused the Master Fund’s breach (Pltf IGP Opp at 25; Pltf TREO Opp at 17-18). The court disagrees. As for IGP, although the FAC does aver that “Invictus” (without distinguishing between Invictus Global and IGP) had been at odds with certain investors in the Master Fund based on Invictus’ management of the fund, that does not, in and of itself, support an inference that IGP acted contrary to the scope of its relationship with the Master Fund or personally profited from the Master Fund breaching its agreement with Jefferies.

Turning to the TREO Defendants, Jefferies primarily relies on allegations in a separate lawsuit—*Invictus Global Management LLC v Corbin Capital Partners, L.P.*, No. 652977/2023—that claims that Corbin Capital Partners, an investor in the Master Fund, is in true control of the Master Fund (Pltf TREO Opp at 17). As Jefferies puts it, this lawsuit’s allegations establish a plausible inference that the TREO Defendants were acting to protect Corbin, not the Master Fund (*id.*). This contention, however, amounts to nothing more than mere speculation as to the TREO Defendant’s motivations and appears to be somewhat at odds with Jefferies’ own allegations that defendants were motivated by the fact that the LATAM Claims’ price had fallen significantly after Invictus Global had purportedly agreed to enter a transaction (*see Burrowes v Combs*, 25 AD3d 370, 372 [1st Dept 2006] [“Although on a motion to dismiss the allegations in a complaint should be construed liberally, to avoid dismissal of a tortious interference with contract claim a plaintiff must support his claim with more than mere speculation”]).

In sum, Movants motion to dismiss Jefferies' tortious interference claims are granted, and those claims, as alleged against Movants, are dismissed.

Conclusion

For the foregoing reasons, it is hereby

ORDERED that defendant Invictus Special Situations I GP, LLC's motion to dismiss plaintiff's First Amended Complaint (MS002) is granted insofar as dismissing plaintiff's claim for tortious interference with contract (Count V), and is denied in all other respects; and it is further

ORDERED that defendants TREO Vitus GP, LLC, and TREO Asset Management LLC's motion to dismiss plaintiff's First Amended Complaint (MS003) is granted insofar as dismissing plaintiff's claim for tortious interference with contract (Count VI), and is denied in all other respects; and it is further

ORDERED that within 30 days of the e-filing of this order, plaintiff shall file a copy of its First Amended Complaint on the docket, and defendants, to the extent they have not done so already, shall file an answer to the First Amended Complaint; and it is further

ORDERED that a preliminary conference shall be held via Microsoft Teams on September 25, 2024, at 2:30 p.m. or at such other time that the parties shall set with the court's law clerk. Prior to the conference, the parties shall meet and confer to determine if there is agreement to stipulate to a preliminary conference order, available at <https://www.nycourts.gov/LegacyPDFS/courts/comdiv/NY/PDFs/part49-PC-Order-fillable.pdf>, in lieu of a conference; and it is further

ORDERED that counsel for plaintiff shall serve a copy of this decision, along with notice of entry, on defendants within ten days of this filing.

This constitutes the Decision and Order of the court.

07/09/2024

DATE



MARGARET A. CHAN, J.S.C.

CHECK ONE:

CASE DISPOSED

NON-FINAL DISPOSITION

GRANTED

DENIED

GRANTED IN PART

OTHER

APPLICATION:

SETTLE ORDER

SUBMIT ORDER

CHECK IF APPROPRIATE:

INCLUDES TRANSFER/REASSIGN

FIDUCIARY APPOINTMENT

REFERENCE