

**Dominion Capital LLC v HUB Cyber Sec. Ltd.**

2024 NY Slip Op 32812(U)

August 7, 2024

Supreme Court, New York County

Docket Number: Index No. 656000/2023

Judge: Anar Rathod Patel

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  
COUNTY OF NEW YORK: COMMERCIAL DIVISION PART 45

-----X

|                          |                                   |                    |
|--------------------------|-----------------------------------|--------------------|
| DOMINION CAPITAL LLC     | <b>INDEX NO.</b>                  | <u>656000/2023</u> |
| Plaintiff,               | <b>MOTION</b>                     |                    |
| - v -                    | <b>DATE</b>                       | <u>05/23/2024</u>  |
| HUB CYBER SECURITY LTD., | <b>MOTION SEQ.</b>                |                    |
| Defendant.               | <b>NO.</b>                        | <u>002</u>         |
|                          | <b>DECISION + ORDER ON MOTION</b> |                    |

-----X

**HON. ANAR RATHOD PATEL:**

The following e-filed documents, listed by NYSCEF document number (Motion 002) 36, 37, 38, 39, 40, 41, 42, 43, 44, 45, 46, 47, 48, 50 were read on this motion to/for DISMISSAL.

Plaintiff/Counterclaim Defendant Dominion Capital LLC (“Plaintiff” or “Dominion”) moves to dismiss Defendant/Counterclaim Plaintiff HUB Cyber Security Ltd.’s (“Defendant” or “HUB”) amended counterclaim for tortious interference with prospective contractual and business relations pursuant to CPLR § 3211(a)(7).

**Relevant Factual<sup>1</sup> and Procedural History**

Defendant HUB is a limited liability company organized and existing under the laws of Israel, with its principal place of business in Israel. NYSCEF Doc. 33 at ¶¶ 29 (Def.’s Am. Verified Answer and Countercl.). Plaintiff Dominion is a Connecticut limited liability company with its principal place of business in New York. Non-party Mount Rainier was a special purpose acquisition company (“SPAC”) traded on the Nasdaq Global Market and sponsored by non-party DC Rainier SPV LLC, a Delaware limited liability company managed by Plaintiff. *Id.* at ¶¶ 33–35.

In early 2022, HUB and Mount Rainier commenced discussions regarding a business combination that would result in HUB being publicly traded on the NASDAQ, thereby meaning that HUB would be de-listed from the Tel Aviv Stock Exchange (“TASE”). *Id.* at ¶ 38. On or about March 23, 2022, HUB and Mount Rainier announced that they had entered into the Business Combination Agreement (“BCA”). *Id.* at ¶ 39; NYSCEF Doc. No. 14 (3/23/22 BCA). Pursuant to the BCA, HUB agreed to pay Mount Rainier’s liabilities and expenses in connection with the business combination transaction (“SPAC Expenses”); said expenses were to be paid out of Trust

<sup>1</sup> The facts are taken from the Amended Verified Answer and Counterclaim and, for the purposes of this motion, are accepted as true.

Funds (defined in the BCA at § 5.13) and drawing upon an approximate \$50 million PIPE investment. *Id.* at ¶¶ 40, 43.

On or about February 28, 2023, HUB and Mount Rainier consummated the contemplated business combination transaction. However, the transaction did not generate the projected amount of cash. HUB was delisted from the TASE at closing. *Id.* at ¶¶ 44, 45. Accordingly, HUB had insufficient funds to pay the SPAC expenses. HUB alleges, on information and belief, that Dominion was aware of HUB's predicament. *Id.* at ¶¶ 48, 49. Therefore, on the same day, HUB and Dominion entered into the Senior Secured Demand Promissory Note ("Dominion Note") and Equity Line of Credit Agreement ("Dominion ELOC") in consideration of loan principal in the amount of \$2.5 million. *Id.* at ¶ 51. HUB concedes it has not made any payments on the Dominion Note. *Id.* at ¶ 52.

On May 1, 2023, Dominion demanded HUB repay the loan principal *via* email sent to HUB's CEO, Uzi Moskowitz. NYSCEF Doc. No. 2, at ¶ 15 (Pl.'s Verified Compl.). Still, HUB failed to make any payments on the loan. *Id.*

In an attempt to secure the funding to repay Dominion, HUB commenced negotiations with non-party Keystone Capital Partners, LLC ("Keystone") in or around October 2023. NYSCEF Doc. No. 33 at ¶ 54. HUB alleges that, according to the terms of the deal, it would enter into an ordinary share purchase agreement with Keystone that would provide an equity line of credit ("Keystone ELOC"). *Id.* at ¶ 55. In consideration of the Keystone ELOC, Keystone would make an up-front payment of \$3.5 million to HUB (the "Keystone Note"), which would enable HUB to satisfy its obligations to Dominion under the Dominion Note. *Id.* at ¶ 57. HUB alleges that Dominion was aware of HUB's negotiations with Keystone and knew the Keystone ELOC would allow HUB to satisfy its outstanding payment to Plaintiff. *Id.* at ¶¶ 58–65.

In or around November 2023, representatives of HUB, Keystone, and Dominion participated in a teleconference in which they discussed Keystone's potential financial arrangement. *Id.* at ¶¶ 59, 60. HUB alleges that it offered Dominion that it would forgo the Keystone ELOC and Keystone Note if Dominion would loan HUB a comparable amount, which would be repaid through the Dominion ELOC. *Id.* at ¶ 61. Shortly after the call, HUB alleges Dominion informed HUB's outside counsel that it accepted the offer and agreed to sign a waiver that would enable HUB to pursue the Keystone ELOC, instead of the Dominion ELOC. *Id.* at ¶ 62.

On December 1, 2023, Dominion commenced the present breach of contract action against HUB by the filing of Summons and Complaint, seeking to recover damages arising from HUB's failure to pay the \$2.5 million in connection with the Dominion Note. NYSCEF Doc. No. 1 (Pl.'s Summons), 2. Said Summons and Complaint, along with the supporting papers, were served upon Defendant HUB on January 26, 2024. NYSCEF Doc. No. 9 (Aff. of Serv.)

By HUB's account, HUB and Keystone continued their negotiations in parallel with HUB's negotiations with Dominion. NYSCEF Doc. No. 33 at ¶ 63. HUB alleges that on or around December 6, 2023, it reached an agreement with Keystone on the Keystone ELOC and the Keystone Note. *Id.* at ¶ 66. However, Keystone then abruptly and inexplicably ceased

communicating with HUB on or around December 8, 2023.<sup>2</sup> *Id.* at ¶ 67. HUB alleges that it was unable to contact Keystone until January 2024, when HUB’s CEO attended a meeting with Keystone in New York. *Id.* at ¶¶ 68–69. HUB alleges that, at this meeting, it learned that Keystone had stopped communicating with it and pursuing the Keystone ELOC and Keystone Note because, based on information and belief, Dominion had pressured Keystone with injurious action if it did not back out of the deal. *Id.* at ¶¶ 69–70. HUB alleges, on information and belief, that Dominion denigrated HUB to Keystone, falsely described HUB’s financial condition and prospects, told Keystone it should not do business with HUB, and threatened potential regulatory action against Keystone if it pursued the deal. *Id.* at ¶¶ 71, 74.

HUB further alleges that, on March 18, 2024, Dominion intentionally published misleading information in its Schedule 13D filing with the Securities and Exchange Commission (“SEC”). NYSCEF Doc. No. 35 (Schedule 13D). Specifically, HUB alleges that the Schedule 13D falsely claimed that Dominion had commenced insolvency proceedings against HUB in Israel on February 14, 2024, although HUB asserts that Dominion did not commence said proceedings until April 10, 2024. NYSCEF Doc. No. 33 at ¶¶ 78–79. HUB alleges, on information and belief, that Dominion intentionally included this false information in the Schedule 13D to manipulate the price of HUB’s stock to harm HUB’s business and enable Dominion to obtain greater control over HUB. *Id.* at ¶ 83.

In light of the foregoing, HUB filed its Answer and Counterclaim on March 26, 2024, alleging tortious interference with prospective contractual and business relations. NYSCEF Doc. Nos. 13–15. HUB alleges that Dominion pressured and threatened Keystone to back out of their deal on the Keystone ELOC and Keystone Note. *Id.* Dominion filed a Motion to Dismiss the Counterclaim (Mot. Seq. No. 1) on April 15, 2024. NYSCEF Doc. Nos. 16–20. The parties appeared for a Preliminary Conference before this Court on May 7, 2024, at which time the Court directed HUB to file an amended answer with counterclaim(s). NYSCEF Doc. Nos. 30, 31.

Defendant HUB filed its Amended Answer and Counterclaim on May 13, 2024. NYSCEF Doc. Nos. 33–35. On May 23, 2024, Dominion filed the instant Motion to Dismiss HUB’s Amended Counterclaim for tortious interference of prospective contractual and business relations. NYSCEF Doc. Nos. 36–39. Dominion argues that HUB fails to plausibly allege a claim for tortious interference with prospective contractual and business relations because: (1) HUB’s Amended Counterclaim does not sufficiently plead that Dominion interfered with any prospective business relationship between HUB and Keystone; (2) HUB has not offered a plausible explanation as to why Dominion would interfere with a deal that would result in it recovering the amount owed under the Dominion Note; and (3) HUB failed to plead that the alleged conduct constituting the alleged interference was wrongful or for the sole purpose of harming HUB. *See id.*

### **Legal Discussion**

On a motion to dismiss brought pursuant to CPLR § 3211(a)(7), “pleadings are to be afforded a liberal construction, allegations are taken as true, the plaintiff is afforded every possible inference, and a determination is made only as to whether the facts as alleged fit within any cognizable legal theory.” *CSC Holdings, LLC v. Samsung Elecs. Am., Inc.*, 146 N.Y.S.3d 17, 18

---

<sup>2</sup> The Amended Answer at ¶ 67 cites to the date of December 8, 2024, which appears to be a typographical error.  
 656000/2023 DOMINION CAPITAL LLC vs. HUB CYBER SECURITY LTD. Page 3 of 7  
 Motion No. 002

(2021) (internal citations omitted). Nevertheless, “[d]ismissal of the complaint is warranted if the [movant] fails to assert facts in support of an element of the claim, or if the factual allegations and inferences drawn from them do not allow for an enforceable right of recovery.” *Connaughton v. Chipotle Mexican Grill, Inc.*, 29 N.Y.3d 137, 142 (2017) (internal citations omitted). Courts will grant a motion to dismiss where a movant states a cognizable cause of action, but fails to assert a material fact necessary to meet an element of the claim. *See e.g., Arnon Ltd v. Beierwaltes*, 3 N.Y.S.3d 31, 33 (2015). To state a claim for tortious interference with prospective business or contractual relations, the plaintiff, “must allege that: (a) the plaintiff had business relations with a third party; (b) the defendant interfered with those business relations; (c) the defendant acted with the sole purpose of harming the plaintiff or by using unlawful means; and (d) there was resulting injury to the business relationship.” *Thome v. Alexander & Louisa Calder Found.*, 890 N.Y.S.2d 16, 29 (2009) (citing to *Carvel Corp. v. Noonan*, 3 N.Y.3d 182, 189–190 (2004); *NBT Bancorp v. Fleet/Norstar Fin. Group*, 87 N.Y.2d 614 (1996); *Hoesten v. Best*, 34 A.D.3d 143, 159 (2006)); *see also Guard-Life Corp. v. Parker Hardware Mfg. Corp.*, 50 N.Y.2d 183 (1980).

The parties do not dispute that HUB has sufficiently pled that it had business relations with a third-party, Keystone. HUB alleges specific negotiations with Keystone with precise terms for the Keystone ELOC and Keystone Note. *See* NYSCEF Doc. No. 33 at ¶¶ 54–67.

Dominion argues that HUB did not sufficiently plead that Dominion interfered with any prospective business relationship. Dominion asserts that, at most, HUB identifies a singular phone call in November 2023 in which it, along with Dominion and Keystone, discussed Keystone’s potential financing arrangement. Thus, HUB sufficiently alleges that Dominion knew of the business relationship. However, HUB’s allegations as to Dominion’s contacts with Keystone and whether those contacts amount to interference are stated in wholly conclusory language. *See Bonanni v. Straight Arrow Pubs.*, 133 A.D.2d 585, 586–587, 520 N.Y.S.2d 7 (1987). HUB asserts, without any particularity, that “it became clear that it was never Dominion’s intent to permit HUB to obtain financing from Keystone,” and that Dominion sought to leverage its own position towards control of HUB. NYSCEF Doc. No. 33 at ¶ 65.

HUB alleges that sometime in January 2024, it learned of discussions between Dominion and Keystone whereby, upon “information and belief”, Dominion repeatedly and aggressively pressured Keystone by denigrating HUB” and telling “Keystone it should not do business with HUB.” *Id.* at ¶¶ 71, 74. Notably absent are any specific facts as to the date of the meeting, attendees of the meeting, and the source of the accusations against Dominion. In fact, a close reading of the Amended Counterclaim illustrates that HUB fails to plead any contacts between Dominion and Keystone other than the November 2023 phone call. The balance of the allegations—that Keystone engaged in one or more communications with Dominion whereby they were told to cease business with HUB—are based upon information and belief, and therefore insufficient to establish the element of interference with business relations necessary to defeat a motion to dismiss. *See Vill. of Catskill v. Kemper Grp.-Lumbermen’s Mut. Cas. Co.*, 490 N.Y.S.2d 619, 621 (1985); *Elmrock Oppt’y Master Fund I, L.P. v. Citicorp N. Am. Inc., et al.*, 62 N.Y.S.3d 797, 797 (1st Dept. 2017) (“because [the allegation of fraud in the inducement claim] is pleaded on information and belief, this allegation is insufficient to state the claim”) (internal citations omitted).

As to the third element, HUB fails to plead that Dominion acted either with the sole purpose to harm HUB or used unlawful means to intentionally interfere with the business relations. Any attempt to demonstrate that Dominion's alleged interference was for the sole purpose of harming HUB relies on conclusory assertions. *See, e.g., Algomod Techs. Corp. v. Price*, 886 N.Y.S.2d 120, 120 (2009) ("the complaint fails to correct the deficiencies in plaintiff's prior complaint, which was dismissed for failure to plead the elements of that cause of action in a nonconclusory manner, and therefore was properly dismissed"); *see also Jacobs v. Continuum Health Partners, Inc.*, 776 N.Y.S.2d 279, 280–81 (2004) ("Plaintiff neither alleges specific facts that could support an inference that defendants were motivated solely by a desire to harm her, nor does she allege specific facts that, if proven, would show that the communicated evaluation ... was objectively false or otherwise independently wrongful.").

HUB cannot argue that Dominion wanted to maximize its own holdings while simultaneously claiming that Dominion acted solely with the intent of harming HUB. *See Thome*, 890 N.Y.S.2d at 30 ("Plaintiff has not alleged any facts suggesting that defendants violated the law or undertook actions with the sole purpose of harming him; indeed by plaintiff's own theory of the case, defendants acted with the intent of benefitting themselves."); *see also Carvel Corp.*, 3 N.Y.3d at 190 ("It is undisputed that Carvel's motive in interfering with the franchisees' relationships with their customers was normal economic self-interest...[i]t was not acting solely to hurt the franchisees"). By HUB's own logic, Dominion acted with, at least, a two-fold intention: to harm HUB and to benefit itself. Accordingly, HUB's theory as to Dominion's purported motivations implicitly demonstrates that Dominion did not act with the sole purpose to harm HUB.

Alternatively, HUB attempts to plead that Dominion's alleged interference was wrongful. New York Courts have applied a more stringent standard to claims for tortious interference with prospective business or contractual relations than claims for tortious interference with a binding contractual relationship. *Carvel Corp.*, 3 N.Y.3d at 189–190 ("inducing breach of a binding agreement and interfering with a nonbinding 'economic relation' can both be torts, but that the elements of the two torts are not the same."); *NBT Bancorp Inc.*, 87 N.Y.2d at 621 ("Where there has been no breach of an existing contract, but only interference with prospective contract rights, however, plaintiff must show more culpable conduct on the part of the defendant."). "Wrongful means' include physical violence, fraud or misrepresentation, civil suits and criminal prosecutions, and some degrees of economic pressure; they do not, however, include persuasion alone although it is knowingly directed at interference with the contract." *Guard-Life Corp.*, 50 N.Y.2d at 191. Moreover, because the claim is based on a non-binding relationship, HUB must show that Plaintiff's conduct amounted either to a crime or an independent tort. *See Carvel Corp.*, 3 N.Y.3d at 190.

HUB fails to allege any specific crime or independent tort. HUB's vague and conclusory allegations that Dominion falsely described financial conditions, told Keystone it should not do business with HUB, and threatened potential regulatory action against Keystone do not alone constitute wrongful means. Even if the Court were to credit HUB's assertions that Dominion "denigrated" HUB to Keystone, HUB has not alleged the resulting crime or tort necessary to establish a claim for tortious interference with prospective business relations. HUB also does not plead facts sufficient to allege a specific crime or independent tort. For example, HUB does not identify who made the statements, who heard the statements, what the specific statements were, where the statements were made, and when they were made. *See CPLR* § 3016(a); *cf. Amaranth*

*LLC v. J.P. Morgan Chase & Co.*, 888 N.Y.S.2d 489, 489 (2009). Moreover, “[s]tatements made in pleadings upon information and belief are not sufficient to establish the necessary quantum of proof to sustain allegations” that require a heightened pleading standard. *Facebook, Inc. v. DLA Piper LLP (US)*, 23 N.Y.S.3d 173, 179 (2015). Accordingly, HUB fails to sufficiently plead that Dominion employed wrongful means to intentionally interfere with HUB’s business relations.

Turning to HUB’s argument regarding the Schedule 13D filing. NYSCEF Doc. No. 35 (Schedule 13D). HUB’s allegations surrounding this filing further demonstrate HUB’s failure to substantially plead sole purpose or wrongful means. HUB’s Amended Counterclaim states that Dominion, in part, filed the 13D to, “potentially enable [Dominion] to assert greater control over the company[.]” NYSCEF Doc. No. 33 at ¶ 83. The allegations suggest that economic self-interest motivated Plaintiff, at least in part, and thus HUB cannot claim that Dominion acted with a sole purpose to harm HUB. *See Advanced Glob. Tech. LLC v. Sirius Satellite Radio, Inc.*, 836 N.Y.S.2d 807, 812 (N.Y. Cnty. Sup. Ct. 2007), *aff’d as modified*, 843 N.Y.S.2d 220 (2007) (citation omitted).

Additionally, HUB’s Counterclaim states that, on March 18, 2024, Dominion published the Schedule 13D which allegedly contains a false statement that Dominion commenced insolvency proceedings in Israel on February 24, 2024. NYSCEF Doc. No. 33 at ¶ 79. The Counterclaim alleges that Keystone “abruptly stopped communicating” with HUB on December 8, 2024 [*sic*].” *Id.* at ¶ 67. “[C]onduct constituting tortious interference with business relations is, by definition, conduct directed not at the plaintiff itself, but at the party with which the plaintiff has or seeks to have a relationship.” *Carvel Corp.*, 3 N.Y.3d at 192 (2004) (citations omitted). Absent evidence of other communication, a Schedule 13D filed approximately three months after a business relationship has ended cannot have caused said relationship to end. Furthermore, the Schedule 13D filing cannot have been directed at Keystone if Keystone had already terminated communications with HUB. Therefore, the Court finds HUB’s arguments regarding the Schedule 13D filing to be unavailing.


Based upon the foregoing, Defendant HUB fails to satisfy the pleading requirements to state a claim for tortious interference with prospective business relations. HUB’s allegations that Dominion’s “malicious actions” caused “Keystone to pull out of the Keystone ELOC and Keystone Note at the last minute,” NYSCEF Doc. No. 33 at ¶ 75, 77, are conclusory and lack specific facts necessary to plead that Dominion interfered with HUB/Keystone business relations, that any alleged interference perpetrated by Dominion was for the sole purpose of causing it harm, or amounted to a crime or independent tort.

**[INTENTIONALLY LEFT BLANK]**

Accordingly, it is hereby

**ORDERED** that Plaintiff Dominion’s Motion to Dismiss the Amended Counterclaim is GRANTED and Defendant HUB’S Amended Counterclaim is dismissed.

The foregoing constitutes the decision and order of this Court.

|                         |                                     |                            |   |
|-------------------------|-------------------------------------|----------------------------|---|
| <u>8/7/2024</u><br>DATE |                                     |                            | <br>ANAR RATHOD PATEL, A.J.S.C. |
| CHECK ONE:              | <input type="checkbox"/>            | CASE DISPOSED              | <input checked="" type="checkbox"/> NON-FINAL DISPOSITION   |
| APPLICATION:            | <input checked="" type="checkbox"/> | GRANTED                    | <input type="checkbox"/> DENIED   |
| CHECK IF APPROPRIATE:   | <input type="checkbox"/>            | SETTLE ORDER               | <input type="checkbox"/> OTHER  |
|                         | <input type="checkbox"/>            | INCLUDES TRANSFER/REASSIGN | <input type="checkbox"/> FIDUCIARY APPOINTMENT  |
|                         |                                     |                            | <input type="checkbox"/> REFERENCE  |