

**YA II PN, Ltd v Osirius Group, LLC**

2024 NY Slip Op 33235(U)

September 14, 2024

Supreme Court, New York County

Docket Number: Index No. 650547/2024

Judge: Andrea Masley

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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 48

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YA II PN, LTD,

Plaintiff,

- v -

OSIRIUS GROUP, LLC and MILLER, CANFIELD,  
PADDOCK & STONE, P.L.C.,

Defendants.

INDEX NO. 650547/2024

MOTION DATE --

MOTION SEQ. NO. 002 003

**DECISION + ORDER ON  
MOTION**

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HON. ANDREA MASLEY:

The following e-filed documents, listed by NYSCEF document number (Motion 002) 16, 17, 18, 19, 20, 21, 22, 23, 24, 40, 50, 54, 55, 56, 57, 58, 59, 60, 67, 70

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, 39, 41, 51, 61, 62, 63, 64, 65, 66, 68, 69

were read on this motion to/for DISMISS.

In motion sequence 002, defendant Osirius Group LLC (Osirius) moves to dismiss the complaint pursuant to CLPR 3211 (a)(1), (7), and (8).

In motion sequence 003, defendant Miller, Canfield, Paddock & Stone, P.L.C. (Miller) moves to dismiss the complaint pursuant to CLPR 3211 (a)(1), (7), and (8) and CPLR 327. For the reason stated on the record on September 3, 2024, both motions are granted. This decision supplements the decision on the record.

Plaintiff YA II PN, LTD (YA II PN) alleges claims for (i) conversion against Osirius, (ii) tortious interference with contract against both defendants, (iii) tortious interference with prospective economic advantage against both defendants, (iv) aiding and abetting conversion against Miller, and (v) unjust enrichment against both defendants.

The court lacks personal jurisdiction over either of Michigan defendants. “[S]itus of commercial injury is where the original critical events associated with the action or dispute took place, not where any financial loss or damages occurred.” (*CRT Invs., Ltd. v BDO Seidman, LLP*, 85 AD3d 470, 471-72 [1st Dept 2011 [citations omitted].) Here, no events took place in New York. No bank accounts or parties are in New York. It was a Michigan court’s order directing sale of U.S. Hybrid that was the critical event here. Hybrid is not located in New York and has no New York bank accounts. YA II PN cannot rely on its contract with Ideanomics, Inc., a nonparty located in New York, for conferring personal jurisdiction over defendants.

Next, no claim for conversion is alleged. There was no theft here because defendants had a court order from the Michigan court. (*Shmueli v Corcoran Grp.*, 802 NYS2d 871, 875 n 2 [Sup Ct, NY County 2005] [“The basic essence of conversion is civil theft”], *rearg denied* 2006 NY Misc LEXIS 9377, 2006 NY Slip Op 30664[U] [Sup Ct, NY County 2006].) YA II PN’s rejects the Michigan court’s authorization arguing that it was procured by “deceit[.]” but that allegation does not appear in the complaint. (See NYSCEF 67, Opp MOL at 16.) If deceit occurred, it must be pleaded with particularity as required by CPLR 3016(b) for claims sounding in fraud. (*FNF Touring LLC v. Transform Am. Corp.*, 111 AD3d 401, 402 [1st Dept 2013].) “[A]n action will lie for the conversion of money where there is a specific, identifiable fund and an obligation to return or otherwise treat in a particular manner the specific fund in question.” (*Lucker v Bayside Cemetery*, 114 AD3d 162, 174 [1st Dept 2013] [internal quotation marks and citation omitted], *lv denied* 24 NY3d 901 [2014].) YA II PN fails to allege a specific identifiable fund.

Because no claim for conversion is alleged, the aiding and abetting claim against Miller fails. Further, Miller has immunity. A law firm “is immune from liability under the shield afforded attorneys in advising their clients, even when such advice is erroneous, in the absence of fraud, collusion, malice or bad faith.” (*Pursuit Inv. Mgmt. LLC v Alpha Beta Cap. Partners, L.P.*, 127 AD3d 580, 581 [1st Dept 2015] [internal quotation marks and citations omitted].)

Tortious interference with contract requires: (1) the “existence of a valid contract” between plaintiff and a third party, (2) “defendant’s knowledge of that contract,” (3) “defendant’s intentional procurement of the third party’s breach of the contract without justification,” (4) “actual breach” of the contract, and (5) “damages” resulting therefrom. (*Vigoda v DCA Prods. Plus Inc.*, 293 AD2d 265, 266 [1st Dept 2002].) Here, no breach by Ideanomics, Inc. is alleged. (*PKNY 86th Street, LLC v Grab & Go Convenience LLC*, 2021 WL 713917, \*1, 2021 NY Misc LEXIS 12762, \*1 [Sup Ct, NY County 2021, Schecter, J.] [dismissing breach of contract counterclaim where “defendants do not identify what obligations under the [contract] plaintiffs breached and facts demonstrating how they did so”].)

A tortious interference with prospective economic advantage claim requires allegations of “interference ... accomplished by wrongful means or that [the] defendant acted for the sole purpose of harming the plaintiff.” (*Tsatskin v Kordonsky*, 189 AD3d 1296, 1298 [2d Dept 2020] [internal quotation marks and citation omitted]). This claim fails here because plaintiff fails to allege that Osirius acted for the sole purpose of harming YA II PN and does not plead facts establishing that Miller committed the alleged interference through “wrongful means” or with “the sole purpose of harming” YA

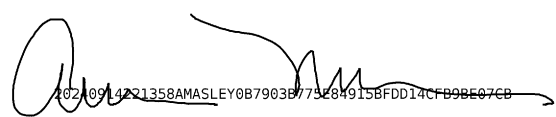
II PN. (*Id.*) The “wrongful means” element requires conduct constituting a crime or independent tort. (*Id.*)

To state unjust enrichment claim, plaintiff must allege that “(1) the other party was enriched, (2) at that party’s expense, and (3) that it is against equity and good conscience to permit the other party to retain what is sought to be recovered.” (Georgia Malone & Co. v. Rieder, 19 NY3d 511, 516 [2012].) Here, there is no connection between YA II PN and defendants.

Accordingly, it is

ORDERED that motions sequence 002 and 003 are granted and the complaint is dismissed in its entirety with costs and disbursements to Osirius Group LLC and Miller, Canfield, Paddock & Stone, P.L.C. as taxed by the Clerk of the Court, and the Clerk is directed to enter judgment accordingly in favor of Osirius Group LLC and Miller, Canfield, Paddock & Stone, P.L.C; and it is further

ORDERED that Osirius Group LLC and Miller, Canfield, Paddock & Stone, P.L.C. are directed to submit transcript to be so ordered.



9/14/2024

DATE

ANDREA MASLEY, J.S.C.

CHECK ONE:

CASE DISPOSED

GRANTED

DENIED

APPLICATION:

SETTLE ORDER

CHECK IF APPROPRIATE:

INCLUDES TRANSFER/REASSIGN

NON-FINAL DISPOSITION

GRANTED IN PART

OTHER

SUBMIT ORDER

FIDUCIARY APPOINTMENT

REFERENCE