

**Canara Bank, London Branch v MVP Group Intl.,  
Inc.**

2025 NY Slip Op 30409(U)

January 30, 2025

Supreme Court, New York County

Docket Number: Index No. 654602/2023

Judge: Andrea Masley

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SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF NEW YORK: COMMERCIAL DIVISION PART 48

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CANARA BANK, LONDON BRANCH,	<b>INDEX NO.</b>	<u>654602/2023</u>
Plaintiff,	<b>MOTION DATE</b>	<u>--</u>
- v -	<b>MOTION SEQ. NO.</b>	<u>001</u>
MVP GROUP INTERNATIONAL, INC.,		
Defendant.	<b>DECISION + ORDER ON MOTION</b>	

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HON. ANDREA MASLEY:

The following e-filed documents, listed by NYSCEF document number (Motion 001) 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, 36, 37, 38, 39, 40, 41, 42

were read on this motion to/for DISMISSAL.

In motion sequence 001, plaintiff Canara Bank, London Branch, the lender (Lender), moves pursuant to CPLR 3211 (a) (7) to dismiss defendant MVP Group International, Inc.'s (Borrower) counterclaims or, alternatively, to stay this action pursuant to CPLR 2201 pending the outcome of Bank of Baroda, New York Branch's (BOB) pending motion to dismiss counterclaims in *Bank of Baroda, New York Branch v MVP Group International, Inc., et al.*, Index No. 654450/2023.

### Background

Unless indicated otherwise, the following facts are taken from the verified answer, affirmative defenses and counterclaims [VAC] and, for the purposes of this motion, are accepted as true.

Borrower is engaged in candle, home fragrance, and decorative accessory gift manufacturing business. (NYSCEF Doc. No. [NYSCEF] 28, VAC ¶1.)<sup>1</sup> In 2013 and 2016, Borrower entered credit facilities with Lender. (*Id.* ¶7.) Due to COVID, Borrower underwent a restructuring of its existing credit facilities with Lender and nonparty BOB in 2021. (*Id.* ¶¶2, 8; NYSCEF 15, May 25, 2021 Restructured Credit Agreement between BOB and Borrower; NYSCEF 2, May 25, 2021 Restructured Credit Agreement between Lender and Borrower; NYSCEF 16, May 25, 2021 Master Restructuring Agreement between BOB and Lender; NYSCEF 18, September 2021 Master Restructuring Agreement between BOB and Primacy Industries Private Limited [Primacy].) The key aspects of the restructuring agreements were: (1) Borrower was required to obtain a \$30 million infusion from its parent company, nonparty Primacy, to improve Borrower's net worth and provide working capital; (2) Primacy would raise the \$30 million from investors; and (3) establishment of a Debt Service Reserve Account (DSRA) maintained by BOB, initially in the amount of \$ 2 million, from which Borrower's loan payments would be made. (NYSCEF 28, VAC ¶¶2, 9, 14-16.) Lender asserts that on November 30, 2022, Borrower defaulted on the \$30 million credit facility. (NYSCEF 1, Complaint ¶13.)

In its answer, Borrower alleges that Lender “wrongfully deprived [Borrower] of critical letter of credit financing causing [Borrower] to lose tens of millions of dollars in business, and for an additional ten months while [BOB] continued to hold onto \$22.2 million that had been raised and earmarked for remittance to [Borrower].” (NYSCEF 28,

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<sup>1</sup> Unless otherwise noted, VAC citations are to Borrower's allegations beginning on page 14/34.

VAC ¶3.) Borrower asserts counterclaims for (i) breach of a loan agreement, (ii) breach of the implied covenant of good faith and fair dealing, (iii) breach of trust, (iv) aiding and abetting breach of trust, (v) negligent misrepresentation, (vi) tortious interference with business relationship, and (vii) equitable estoppel. Borrower also seeks (viii) a declaratory judgment,

“declaring that, by reason of [Lender]’s wrongful conduct as aforesaid, (a) any notices by [Lender] purporting to declare the restructured credit facilities in default, to terminate the facilities and/or to accelerate payments thereunder are of no force or effect, and (b) [Lender] was and is barred and precluded from exercising any rights or remedies in respect of the 2021 restructured credit facility agreements including, without limitation, declaring the credit facilities in default, terminating the facilities or seeking to accelerate payments thereunder.” (*Id.* ¶ 94.)

For the reasons stated on the record on October 15, 2024, the court denies this motion to dismiss, in part, as to the claims for (i) breach of the loan agreement, (iii) breach of trust, (iv) aiding and abetting breach of trust, (v) negligent misrepresentation, and (vii) equitable estoppel. This written decision supplements the record and addresses the portion of the motion not decided on the record.

### **Legal Standard**

On a CPLR 3211 (a)(7) motion to dismiss, the court must “accept the facts as alleged in the complaint as true, accord plaintiffs the benefit of every possible favorable inference, and determine only whether the facts as alleged fit within any cognizable legal theory.” (*Leon v Martinez*, 84 NY2d 83, 87-88 [1994] [citation omitted].) “[B]are legal conclusions, as well as factual claims which are either inherently incredible or flatly contradicted by documentary evidence” cannot survive a motion to dismiss. (*Summit Solomon & Feldesman v Lacher*, 212 AD2d 487, 487 [1st Dept 1995] [citation omitted].)

## Discussion

### (i) Breach of Loan Documents

The elements of a breach of contract claim are: (1) “the existence of a contract”; (2) “the plaintiff’s performance thereunder”; (3) “the defendant’s breach thereof”; and (4) “resulting damages.” (*Harris v Seward Park Housing Corp.*, 79 AD3d 425, 426 [1st Dept 2010] [citation omitted].)

Borrower sufficiently alleges that Lender breached the September 2021 Sanction Letter (NYSCEF 17) and the September 2021 Master Restructuring Agreement (NYSCEF 18) by “assisting in and allowing the non-remittance of \$22.2 million to MVP” under a third-party beneficiary theory.<sup>2</sup> (NYSCEF 28, VAC ¶44[a].) Borrower, a nonparty to the September 2021 loan agreements, may assert a breach of contract claim “only if it is an intended, and not a mere incidental, beneficiary.” (*LaSalle Natl. Bank v Ernst & Young LLP*, 285 AD2d 101, 108 [1st Dept 2001] [citation omitted], *rearg denied* 2001 NY App Div LEXIS 11868 [1st Dept 2001].) Borrower will be considered an intended beneficiary if

“recognition of a right to performance in [Borrower] is appropriate to effectuate the intention of the parties *and* either (a) the performance of the promise will satisfy an obligation of [Primacy] to pay money to [Borrower]; or (b) the circumstances indicate that [Primacy] intends to give [Borrower] the benefit of the promised performance.” (*Id.* [internal quotation marks and citations omitted].)

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<sup>2</sup> Lender asserts that Borrower’s claim for breach of the September 2021 loan documents is contradicted by the documentary evidence, specifically the affidavit of BOB representative Pradeepa Desai. (NYSCEF 33, MOL at 12-13; see NYSCEF 32, Desai aff.) “An affidavit submitted by movant will almost never warrant dismissal under CPLR 3211.” (*Cajigas v Clean Rite Centers, LLC*, 187 AD3d 700, 701 [2d Dept 2020] [citation omitted].) Accordingly, the court rejected the affirmation at oral argument. (NYSCEF 44, tr at 30:3-8.)

Borrower asserts that it is the intended beneficiary of the September 2021 loan documents. (NYSCEF 28, VAC at 12 ¶¶23 [6th affirmative defense]; *id.* ¶¶24, 61, 62, 66, 77, 80.) The three-step process for remitting the \$30 million and the allocation of the funds to Borrower, as outlined in the September 2021 Sanction Letter, was expressly incorporated into the September 2021 Master Restructuring Agreement. (*Id.* ¶¶12, 13, 16, 18, 20, 21, 26, 30, 75, 76.) Section 8.2 (g) of the agreement provides that \$30 million “shall be infused in [Borrower] in accordance with the terms set out in the Sanctions Letters” to “enable [Borrower] to discharge the outstanding debt towards [Primacy]” and provide working capital in line with the restructuring plan. (NYSCEF 18, September 2021 Master Restructuring Agreement § 8.2 [g]; see NYSCEF 28, VAC ¶18.) Borrower’s allegations are sufficient to support that the parties intended for Borrower to benefit from the Primacy’s performance related to the restructuring.

Second, Borrower sufficiently alleges that Lender breached the May 2021 Canara Bank Restructuring Agreement by “refusing to permit loan payments to be made from the debt service reserve account [DSRA].” (NYSCEF 28, VAC ¶44[b]; see *id.* ¶19, 37.) Pursuant to § 5.33 of the agreement, which allows Lender to debit the DSRA at any time to satisfy loan payments, Lender initially agreed in the summer of 2022 to debit the DSRA for the next scheduled loan payment but later reversed its position. (*Id.* ¶38; see NYSCEF 19, May 2021 Canara Bank Restructured Credit Agreement § 5.33.)

With respect to Borrower’s contractual obligation to pay the debt under the restructured credit facilities, Borrower asserts that its performance is excused based on a repudiation theory. “A party repudiates a contract when it voluntarily disables itself from complying with its contractual obligations.” (*Computer Possibilities Unlimited, Inc.*

*v Mobil Oil Corp.*, 301 AD2d 70, 77 [1st Dept 2002] [internal quotation marks and citations omitted], *lv denied* 100 NY2d 504 [2003].) Such repudiation “discharges nonrepudiating party’s obligations to render performance in the future” or entitles nonrepudiating party to claim “damages for total breach.” (*Id.* [citations omitted].) The failure to remit \$22.2 million to Borrower predates Lender’s claim regarding Borrower’s discontinuation of loan repayment or failure to “replenish the [DSRA] in the amount required to satisfy the Debit Service Reserve Requirement.” (NYSCEF 19, May 2021 Canara Bank Restructured Credit Agreement § 5.33; see NYSCEF 28, VAC ¶46.) Thus, Borrower sufficiently asserts a breach of contract counterclaim notwithstanding its lack of performance.

Borrower sufficiently alleges that it incurred damages because of Lender’s omission following the breach. “To survive a pre-answer motion to dismiss [for failure to state a claim], a pleading need only state allegations from which damages attributable to defendant’s conduct may reasonably be inferred.” (*Fielding v Kupferman*, 65 AD3d 437, 442 [1st Dept 2009] [internal quotation marks and citation omitted].) Borrower need not demonstrate that it has sustained damage at this early stage of proceedings. Construing Borrower’s allegations in the most favorable light, the deprivation of Borrower’s “material rights and benefits arising from and concerning the 2021 restructured credit facility agreements” is sufficient to reasonably infer that such damages are relatable to Lender’s failure to remit \$22.2 million and utilize the DSRA. (NYSCEF 28, VAC ¶42.) Moreover, “[n]ominal damages are always available in breach of contract actions.” (*Kronos, Inc. v AVX Corp.*, 81 NY2d 90, 95 [1993] [citation omitted].) Lender’s motion to dismiss Borrower’s first counterclaim is denied.

(ii) Breach of the Implied Covenant of Good Faith and Fair Dealing

“Implicit in every contract is a covenant of good faith and fair dealing,” and such an implied covenant is breached when “one party to a contract seeks to prevent its performance by, or to withhold its benefits, from the other.” (*Michaan v Gazebo Horticultural, Inc.*, 117 AD3d 692, 693 [2d Dept 2014] [internal quotation marks and citations omitted].) Further, such a pleading must allege facts that defendant acted in bad faith. (*Duration Mun. Fund, L.P. v J.P. Morgan Sec., Inc.*, 77 AD3d 474, 475 [1st Dept 2010].) Under New York law, a claim for breach of the implied covenant of good faith and fair dealing may be dismissed as duplicative of a breach of contract claim when “both claims arise from the same facts.” (*Logan Advisors, LLC v Patriarch Partners, LLC*, 63 AD3d 440, 443 [1st Dept 2009] [citation omitted].) Conversely, an implied covenant of good faith and fair dealing claim is not duplicative where a party “exercises a contractual right as part of a scheme to realize gains that the contract implicitly denies or to deprive the other party of the fruit (or benefit) of its bargain.” (*Elmhurst Dairy, Inc. v Bartlett Dairy, Inc.*, 97 AD3d 781, 784 [2d Dept 2012] [internal quotation marks and citation omitted].)

Relying on *Elmhurst*, Borrower counters that this counterclaim is not duplicative. In *Elmhurst*, plaintiff alleged that defendant’s separate delivery agreement with third parties diverted the distribution business away from plaintiff. (*Id.*) The court found that plaintiff had sufficiently pleaded that “the new delivery arrangement deprives it of the fruit, or benefit, of the exclusivity provision” and that defendant “may have acted in bad faith to circumvent its exclusivity obligations.” (*Id.*)

However, the factual allegations in the present case differ from those in *Elmhurst*. Here, the same facts underpin both the breach of contract and the breach of the implied covenant of good faith and fair dealing claims. (*Compare* NYSCEF 28, VAC ¶¶43-51, *with id.* ¶¶52-59.) Borrower alleges that Lender violated the covenant by failing to remit \$22.2 million and denying the use of funds from the DSRA, which in turn led to Borrower's nonpayment and subsequent damages, thereby barring Lender from asserting any rights or remedies under the restructured credit facility agreements. (*Id.* ¶¶54, 57.) Additionally, Borrower's counterclaims lack factual allegations that specifically support Lender's bad faith, beyond the alleged breach of the 2021 restructuring agreements. (*Id.* ¶¶52-59; *see Warner Direct, LLC v Paramount Global*, 2023 WL 7493244, 2023 NY Misc LEXIS 19082, 2023 NY Slip Op 34025[U], \*6 [Sup Ct, NY County 2023] [complaint merely repackages same conduct that allegedly breached agreement without "any additional facts suggesting an alternative, non-duplicative theory of bad faith conduct in support of an implied covenant claim" (internal quotation marks omitted)].) As such, even assuming Borrower's allegations are true, they do not rise to the level required to sustain a cause of action for breach of the implied covenant of good faith and fair dealing. Borrower's second counterclaim is dismissed without prejudice.

(iii) Breach of Trust, (iv) Aiding and Abetting Breach of Trust, (v) Negligent Misrepresentation, and (vii) Equitable Estoppel

The key disputed element required to establish each tort claim here — breach of trust, aiding and abetting breach of trust, negligent misrepresentation, and equitable estoppel — is the existence of a relationship of trust and confidence. (*See Kurtzman v Bergstol*, 40 AD3d 588, 590 [2d Dept 2007] [to plead breach of fiduciary duty, plaintiff

must allege existence of fiduciary relationship]; *Kaufman v Cohen*, 307 AD2d 113, 125 [1st Dept 2003] [to plead aiding and abetting breach of fiduciary duty, plaintiff must allege that fiduciary breaches their obligations to another ]; *Xerox Corp. v Travelers Cas. & Sur. Co. of Am.*, 225 AD3d 510, 515 [1st Dept 2024] [to plead negligent misrepresentation, plaintiff must allege “special or privity-like relationship imposing duty on the defendant to impart correct information to the plaintiff” (internal quotation marks and citation omitted)]; *Doe v Holy See*, 17 AD3d 793, 795 [3d Dept 2005] [“concealment without actual misrepresentation may form the basis for invocation of the [equitable estoppel] doctrine if there was a fiduciary relationship which gave [the] defendant an obligation to inform [the] plaintiff of facts underlying the claim” (internal quotation marks and citations omitted)].)

New York courts generally do not elevate the contractual relationship between a borrower and a lender to that of a fiduciary relationship. (See *Dobroshi v Bank of Am., N.A.*, 65 AD3d 882, 884 [1st Dept 2009], *lv dismissed* 14 NY3d 785 [2010].) However, a fiduciary relationship may arise “when one party reposes confidence in another and reasonably relies on the other’s superior expertise or knowledge, but not in arm’s-length business transaction involving sophisticated businesspeople.” (*Barrett v Freifeld*, 64 AD3d 736, 739 [2d Dept 2009] [citation omitted].) “The creation of a fiduciary duty does not depend upon the existence of an agreement or contract between the parties, but results from the relationship between the fiduciary and the beneficiary.” (*Benfield v Fleming Properties, LLC*, 89 AD3d 654, 655 [2d Dept 2011] [internal quotation marks and citations omitted].) Furthermore, “[a] tort action may only be asserted in an action for breach of contract where the underlying agreement gives rise to a duty independent

of the contract obligation.” (*Bank Leumi Trust Co. v Block 3102 Corp.*, 180 AD2d 588, 589 [1st Dept 1992] [finding no fiduciary relationship between bank and borrowers or guarantors], *lv denied* 80 NY2d 754 [1992].)

To demonstrate that Lender held a special relationship of trust and confidence with Borrower, Borrower reiterates that it is the intended beneficiary, which the court has found sufficiently alleged in its breach of contract claim, above. Borrower alleges that Lender, acting in concert with BOB, induced and required Borrower to obtain the \$30 million infusion to be raised by Primacy. (NYSCEF 28, VAC ¶¶2, 9, 22, 32.) The \$30 million investor funds were deposited with BOB in an account governed by the Trust and Retention Account Agreement. (NYSCEF 18, September 2021 Master Restructuring Agreement § 8.2 [f][ii][B], 8.2 [g].) Borrower asserts the interrelationship that Borrower had with BOB and Lender, by reference to all relevant loan documents, including the September 2021 Master Restructuring Agreement, which states that “[BOB and Lender] had entered into an inter-creditor agreement ... with [BOB] acting as the lead bank for resolving the debts of the Borrower.” (*Id.* at 1.) The agreement also states that “[BOB] may act (or refrain from taking action) as it considers to be in the best interest of [Lender].” (*Id.* § 11.2 [d].) Additionally, Borrower contends that the three-step capital infusion that BOB and Lender established creates a factual issue as to the existence of a fiduciary relationship. (See NYSCEF 28, VAC ¶¶17, 61-62, 66; see e.g. *Scott v Dime Sav. Bank*, 886 F Supp 1073, 1078 [SDNY 1995] [reasonable jury could have found relationship of trust and confidence where bank encouraged customer “to borrow \$ 100,000 when they only wanted to borrow \$ 5,000,” induced customer “to invest a substantial part of that money through its affiliate, Invest” and “participated

(through Invest) with [customer] as he engaged in stock purchases and sales, which generated commissions that were shared by [bank] and Invest”], *affd* 101 F3d 107 [2nd Cir 1996].) Accordingly, the motion to dismiss breach of trust, aiding and abetting breach of trust, negligent misrepresentation, and equitable estoppel counterclaims is denied.

(vi) Tortious Interference with Business Relationship

“To prevail on a claim for tortious interference with business relations in New York, a party must prove (1) that it had a business relationship with a third party; (2) that the defendant knew of that relationship and intentionally interfered with it; (3) that the defendant acted solely out of malice or used improper or illegal means that amounted to a crime or independent tort; and (4) that the defendant’s interference caused injury to the relationship with the third party.” (*Amaranth LLC v J.P. Morgan Chase & Co.*, 71 AD3d 40, 47 [1st Dept 2009] [citations omitted].)

Borrower alleges that Lender tortiously interfered with its business relationships with both BOB and Primacy. (See NYSCEF 28, VAC ¶¶83-89.) With respect to BOB, Borrower alleges that Lender prevented Borrower from making its loan payments to BOB as required by its 2021 contract with BOB. (*Id.* ¶87.) With respect to Primacy, Borrower alleges that Lender interfered with Borrower’s payment to Primacy of \$20 million owing to Primacy. (*Id.* ¶¶17, 68.) Specifically, Primacy raised the \$30 million which was to be transferred to Borrower, but Borrower alleges that Lender prevented the transfer.

To the extent that Borrower asserts that Lender is responsible for BOB’s failure to transfer to Borrower \$22.2 of \$30 million raised by Primacy for Borrower’s benefit, because Lender acted in concert with BOB, Borrower’s claim is dismissed. Borrower fails to explain what Lender did. However, Borrower’s allegations that Lender barred Borrower from making debt payments from the DSRA, which Lender controlled (*id.*

¶¶37-38), would have affected Borrower's ability to make payments to both BOB and Primacy.

Lender maintains that Borrower fails to satisfy the third and fourth elements but fails to explain why. (NYSCEF 33, MOL at 14.) Lender's motion is otherwise denied because it impermissibly relies on the Desai affidavit (NYSCEF 32) to state facts contrary to Borrower's allegations. (See *Cajigas*, 187 AD3d at 701.) Lender's opposition seems to confuse breach of contract with tortious interference; Borrower is not alleging that Lender caused itself to breach its contract with Borrower. (*Ahead Realty LLC v India House, Inc.*, 92 AD3d 424 [1st Dept 2012] ["asserting that a defendant tortiously interfered with its own contract quite clearly does not state a legally sufficient cause of action" (internal quotation marks and citation omitted)].) Therefore, Lender's motion to dismiss the sixth count for tortious interference is denied except as to Borrower's claim that Lender acted in concert with BOB to fail to transfer \$22.2 million.

The court has considered the parties' remaining arguments and finds them not requiring an alternate result.

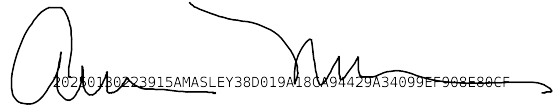
Accordingly, it is

ORDERED that Canara Bank, London Branch's motion to stay is denied; and it is further

ORDERED that Canara Bank, London Branch's motion to dismiss the counterclaims is denied as to the first, third, fourth, fifth, sixth, in part, and seventh and eighth counts in its entirety while the motion is granted as to the second count and sixth count, in part, which are dismissed; and it is further

ORDERED that Canara Bank, London Branch shall answer the counterclaims within 20 days of the date of this decision and order; and it is further

ORDERED that the parties shall submit (e-file and email to sfc-part48@nycourts.gov) a proposed joint Preliminary Conference Order or, if no agreement can be reached, competing proposed orders with 30 days of the date of this decision and order.



1/30/2025

DATE

ANDREA MASLEY, 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