

**Invictus Global Mgt. LLC v Monomoy Capital
Partners LLC**

2025 NY Slip Op 31381(U)

April 2, 2025

Supreme Court, New York County

Docket Number: Index No. 656887/2022

Judge: Melissa A. Crane

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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

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INVICTUS GLOBAL MANAGEMENT LLC,
Plaintiff,

- v -

MONOMOY CAPITAL PARTNERS LLC, SINDICATO
NACIONAL DE TRABAJADORES AL SERVICIO DE LAS
LINEAS AEREAS, TRANSPORTES, SERVICIOS,
SIMILARES Y CONEXOS, MONOMOY CAPITAL
MANAGEMENT, L.P., ATHENA ADVISORY PARTNERS,
LLC,

Defendant.

INDEX NO. 656887/2022

11/20/2024,
11/20/2024,
11/20/2024,
02/25/2025,

MOTION DATE 03/04/2025

**MOTION SEQ. NO. 006 007 008
010 011**

**DECISION + ORDER ON
MOTION**

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The following e-filed documents, listed by NYSCEF document number (Motion 006) 98, 99, 100, 101, 102, 103, 104, 105, 106, 107, 108, 109, 122, 125, 126, 129, 130

were read on this motion to/for DISMISS.

The following e-filed documents, listed by NYSCEF document number (Motion 007) 110, 111, 112, 113, 114, 115, 123, 127, 128, 131

were read on this motion to/for DISMISSAL.

The following e-filed documents, listed by NYSCEF document number (Motion 008) 116, 117, 118, 119, 120, 121, 124, 132, 133, 134

were read on this motion to/for DISMISSAL.

The following e-filed documents, listed by NYSCEF document number (Motion 010) 136, 137, 138, 139, 140, 141, 142, 143, 144, 145, 146, 158, 159, 160, 161, 162, 163, 164, 165, 166, 167, 169, 170, 171, 172, 173, 174

were read on this motion to/for DISMISS.

The following e-filed documents, listed by NYSCEF document number (Motion 011) 147, 148, 149, 150, 151, 168

were read on this motion to/for DISMISS.

Motions 10 and 11 to dismiss for failing to register the Fund are denied for the reasons set forth on the record of 4/1/2025. Primarily, there is nothing to rebut plaintiff's showing that, under Cayman Islands law, the Fund is not a separate legal entity from TREO. Moreover, there

was no contempt of this court's order. The cross motion for sanctions is denied because defendant's motion had a colorable basis.

For the reasons set forth on the record, and the following, the court dismisses: the first cause of action for fraudulent inducement against Independencia, the second cause of action for fraudulent inducement against Monomoy, and the third cause of action for constructive fraud against all defendants (collectively the "fraud claims").

In connection with bankruptcy proceedings for Aeromexico, in July 2021, Plaintiff purchased certain general unsecured claims that defendant Independencia had against Aeromexico. According to the second amended complaint, defendants misrepresented that plaintiff's predecessor, non party Invictus Global Management (IGM), would have the right to vote the Independencia claims against confirmation of Aeromexico's plan of reorganization in the bankruptcy proceedings. It turns out that, on March 21, 2021, Independencia had entered into an agreement that obligated it to vote in favor of the bankruptcy plan. Defendants failed to disclose this agreement.

Nevertheless, as explained on the record, there simply was no reasonable reliance on the representations that IGM had the ability to oppose confirmation of the bankruptcy plan. It is undisputed that, on April 22, 2021, prior to plaintiff's purchase, the judge in the Aeromexico bankruptcy expressly ordered that "**Independencia shall** adhere to the requirements and conditions of the Bankruptcy Protection Covenant applicable to APSA, *mutatis mutandis*, (including, without limitation, to vote **in favor** of a Complying Plan)" [see Order of the United States Bankruptcy Court, Southern District of New York, dated April 22, 2021, ["CBA Order"] [EDOC 100] at ¶ 8). In addition, in the "Bankruptcy Protection Covenant" attached to the CBA order, ASPA covenanted to "support a Complying Plan proposed by the Company (including

without limitation, by voting in favor of a Complying Plan). Thus, and plaintiff does not dispute, ASPA had to vote in support of the reorganization plan and the CBA order required Independencia to adhere to ASPA's requirements.

Given that (1) a court order specifically ordered that “**Independencia shall** adhere to the requirements and conditions of the Bankruptcy Protection Covenant applicable to APSA,” (2) it is undisputed that plaintiff knew about this order and (3) plaintiff knew from the CBA order and attachment that ASPA had to vote in favor of the plan, it was unreasonable to rely on defendants' alleged statements to the contrary that Independencia had the ability to vote against confirmation, or that somehow the language from a court order did not apply to Independencia.

This belief is all the more unreasonable when looking at the language in the Transfer Agreement [see EDOC 104] by which plaintiff acquired the claims. In section 6(b) plaintiff represented that it was a sophisticated party and that it:

“(iii) has adequate information concerning the business and financial condition of the Debtor, the customs and practices of the marketplace for purchasing and selling bankruptcy claims, and the status of the Bankruptcy Case to make an informed decision regarding the sale or purchase, as the case may be, of the Transferred Rights, (iv) has agreed to the Purchase Price **based on its own independent investigation, has consulted with such advisors as it believes appropriate** and has not relied on any representations made by the other party hereto (except for its reliance on any express representations, warranties, and covenants made by the other party herein).”

Thus, not only should have plaintiff performed its own evaluation given what it already knew, it actually claimed to have actually done so in the contract. Proper due diligence would have involved an evaluation of the effects of the CBA order. If it did not perform proper due diligence, plaintiff should not complain that it was fraudulently induced when it did not protect itself in the face of contrary facts (see *HSH Nordbank AG v. UBS AG*, 95 A.D.3d 185, 194 [1st

Dep't 2012] [plaintiff cannot establish that it entered into arm's length transaction in justifiable reliance upon alleged misrepresentations if that plaintiff failed to make use of means of verification that were available to it]; *N. Grp. Inc. v. Merrill Lynch, Pierce, Fenner & Smith Inc.*, 135 A.D.3d 414 (1st Dep't 2016) [fraud claim properly dismissed where plaintiffs admitted that they never read the relevant prospectuses, which were filed with the SEC and were publicly available through SEC's website, and from which plaintiffs could have ascertained the specific risks that they claim were not disclosed to them]).

Finally, there is no causation. The failure to disclose the Independencia March contract in no way changes the effect of the bankruptcy judge's order that Independencia had to vote in favor of the bankruptcy plan. Again, it is undisputed that plaintiff was well aware of that judicial order. Accordingly, the court dismisses the fraud claims.

In addition, and in accordance with the reasoning on the record, the court dismisses the fifth cause of action against Monomoy for unjust enrichment. This cause of action relies entirely on the same misrepresentations that the court has held are not actionable.

The remaining two causes of action are against Independencia only. The fourth cause of action is for breach of contract and the sixth cause of action is for rescission based on mutual mistake (the "contract claims").

It is undisputed that Independencia is NOT the party who signed the contract with plaintiff. Rather, the Transfer of Claim Agreement is between plaintiff and Cowan Special Investments LLC (see, e.g. EDOC 104 signature page). An initial transfer agreement [see EDOC 101], transferred the claims from Independencia to Cowan who then transferred the claims to plaintiff in a separate agreement.

The complaint alleges that the two contracts make up an integrated transaction (see SAC [EDOC 94 at ¶ 58]). It would appear that Independencia has addressed its lack of privity argument only to the tort claims, thereby conceding, at least for the purposes of breach of contract, that the two contracts were integrated. In any event, given the simultaneous nature of the transfers, and their near identical language, it is an issue of fact at this juncture whether the contracts were part of an integrated transaction such that Independencia and plaintiff were the real contracting parties.

In Section 4 (g) of the Transfer Agreement Independencia warranted that

Other than the [CBA] Order (including the annex thereto), there are no contracts, documents, stipulations or orders, of any kind or nature whatsoever, that would **materially and adversely affect** the Transferred Rights; the Order has not been revoked, withdrawn, amended or modified in whole or part after execution thereof

Independencia argues that, because, as discussed above, the CBA order placed plaintiff on notice that it would not have the right to vote, the undisclosed contract could not “materially and adversely affect” the Transferred Rights.

Independencia is correct. Plaintiff never explains why the failure to disclose the contract made the situation any worse than what the CBA order afforded. The allegations largely fail, because, as pled, plaintiff’s damages are so speculative that it has failed to plead that the failure to disclose the March contract had a material and adverse affect on the Transferred rights, beyond the effect the prior CBA order already had.

The court will now address why the complaint is vague as to damages sufficient to allege a material and adverse affect. It is undisputed that, pursuant to a settlement, plaintiff was, in the end, actually able to vote. Trying to avoid this inconvenient fact, plaintiff points to paragraph 74 of the complaint (and the court for good measure also took into account paragraph 73). Plaintiff makes the vague allegation that, had it received the promised unrestricted unsecured claims, it

would have been able to carry out its intention to “shape” a plan of reorganization” (§ 73) and exert “leverage” to achieve a greater recovery for its claims.

These vague allegations lack the basic substance to apprise Independecia of what plaintiff is claiming. What does plaintiff even mean by “shape” and “leverage”? Plaintiff does not plead an alternative scenario or plead that plaintiff would have been successful in their “leverage” efforts. What would those efforts have entailed? Defendant cannot possibly defend against such vague allegations. Therefore, the court dismisses the contract claims as well.

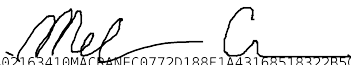
Plaintiff has leave to replead, so there is no need to make a separate motion. However, plaintiff has until June 4, 2025 to do so. If plaintiff chooses to replead, before filing, the court would like plaintiff to circulate a proposed amended complaint to all parties and the court, and be prepared to participate in a conference.

Accordingly, it is

ORDERED THAT the court denies motions 10 and 11; and it is further

ORDERED THAT the court grants motions to dismiss 6, 7 and 8 in their entirety; and it is further

ORDERED THAT all discovery is suspended until further order of the court.


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<u>4/2/2025</u> DATE					<u>MELISSA A. CRANE, J.S.C.</u>		
CHECK ONE:	<input type="checkbox"/>	CASE DISPOSED		<input checked="" type="checkbox"/>	NON-FINAL DISPOSITION		
	<input type="checkbox"/>	GRANTED	<input type="checkbox"/>	<input checked="" type="checkbox"/>	GRANTED IN PART	<input type="checkbox"/>	OTHER
APPLICATION:	<input type="checkbox"/>	SETTLE ORDER		<input type="checkbox"/>	SUBMIT ORDER		
CHECK IF APPROPRIATE:	<input type="checkbox"/>	INCLUDES TRANSFER/REASSIGN		<input type="checkbox"/>	FIDUCIARY APPOINTMENT	<input type="checkbox"/>	REFERENCE