

Nationwide Mut. Ins. Co. v O3 Indus., LLC

2025 NY Slip Op 33597(U)

September 25, 2025

Supreme Court, New York County

Docket Number: Index No. 654643/2024

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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NATIONWIDE MUTUAL INSURANCE COMPANY, AVIVA
INSURANCE COMPANY OF CANADA,

Plaintiff,

- v -

O3 INDUSTRIES, LLC, ANTAMEX INDUSTRIES,
INC., JEREMY OZEN, DANIEL OZEN, DAVID OZEN

Defendant.

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INDEX NO. 654643/2024

**MOTION DATE 03/21/2025,
03/21/2025,
03/21/2025**

MOTION SEQ. NO. 005 006 007

**DECISION + ORDER ON
MOTION**

The following e-filed documents, listed by NYSCEF document number (Motion 005) 60, 61, 62, 63, 90, 91, 92, 94, 103, 104, 105, 106, 107, 108, 109, 110

were read on this motion to/for DISMISS.

The following e-filed documents, listed by NYSCEF document number (Motion 006) 64, 65, 66, 67, 68, 69, 70, 71, 83, 84, 85, 86, 93, 111, 112, 113

were read on this motion to/for STRIKE PLEADINGS.

The following e-filed documents, listed by NYSCEF document number (Motion 007) 76, 77, 78, 79, 87, 88, 89, 95, 98, 99, 100, 101, 102

were read on this motion to/for DISMISS.

Upon the foregoing documents, it is

The motions are decided in accordance with the reasoning on the record of 9/4/2025.

In sum:

The motion to strike paragraph 84 of the complaint (mot. 6) is denied per the reasoning on the record. To wit, the individual defendants hotly contest that any corporation is their alter ego. Given their position, they have no standing to complain about a breach of a nondisclosure agreement between plaintiff Aviva and their bankrupt entity Antamex ULC.

Speaking of Antamex ULC, as explained on the record, it is not a necessary party to this proceeding. First, no defendant could articulate how this proceeding would affect the bankrupt

estate. While there may be other creditors of Antamex ULC, such as vendors, defendants did not identify a single other creditor who would also have a claim against defendants here. The operative agreements allow plaintiffs to proceed against these defendants separate and apart from Antamex ULC (see September 4, 2025 Transcript at 26). Accordingly, defendants' contentions that Antamex ULC is somehow a necessary party is speculative at best.

That part of motion 5 that seeks to dismiss this case against David Ozen for lack of personal jurisdiction is **granted without prejudice to bringing David back in** should discovery with remaining defendants happen to reveal information that would allow defendants to plead jurisdictional facts against him. As currently pled, the allegations are insufficient to assert personal jurisdiction over David who lives in Chicago and is concededly not a manager of a New York entity.

As explained at pages 11-12 of the transcript of September 4, 2025, the court has jurisdiction over defendant O3, because O3 had its principal place of business in New York at the time the relevant underlying events occurred.

As for the individual claims, the court dismissed the tenth cause of action for indemnification against Antamex Industries Inc (AII) to the extent asserted by plaintiff Aviva for the reasons discussed at pages 15-19 of the record. Namely, the court has no basis for jurisdiction for Aviva's, as opposed to Nationwide's claims. As explained on the record at page 21, the court does have jurisdiction over Nationwide's tenth cause of action for indemnification against AII.

The first cause of action is dismissed without prejudice for the reasons stated at pages 35-36 of the record. The second cause of action is dismissed because New York does not recognize

a separate cause of action to pierce the corporate veil (see *Perez v Long Island Concrete Inc.*, 203 AD3d 552 [2022]).

The third cause of action for conversion is dismissed with prejudice as explained on the record at page 39. First, this was not plaintiff's money. Second, to the extent this claim relies on the allegation that defendants pledged to keep the money in Antamex, but moved it to a different company, the claim merely duplicates the breach of contract claim.

The fourth cause of action for unjust enrichment was dismissed against O3 with leave to replead for the reasons discussed at page 42 of the record. However, the court sustained the cause of action as to the individual defendants on account of the allegations from paragraph 84 of the complaint that support an alter ego theory as explained at pages 43-44 of the record.

The fifth cause of action for breach of fiduciary duty is dismissed with leave to replead. For the reasons explained on the record, plaintiff needs to plead a fiduciary relationship vis a vis the individual defendants. Plaintiff also needs to plead damages that are different from those of breach of contract (see transcript pg. 50).

The court dismisses the sixth and seventh causes of action for fraud with leave to replead with greater particularity (see Transcript at pages 53-55). However, as explained on the record, whether the fraud claims are within the statute of limitations is an issue of fact at this juncture.

The eighth (waste of corporate assets) and ninth cause of action (faithless servant) are dismissed with prejudice for lack of standing. Plaintiff is not Antamex ULR. Plaintiffs did not employ the individual defendants and plaintiffs' assets were not wasted by the individual defendants. The tenth cause of action for breach of contract against O3 and Antamex is sustained insofar as Nationwide asserts the claim (see discussion supra and Transcript pgs. 56-57). The

eleventh cause of action is dismissed with leave to replead. A party cannot interfere with its own contract. That “interference” is merely a breach.

Plaintiff can have 20 days from the efiled date of this decision and order to replead. If plaintiff does not replead, defendants shall have 30 days to answer what remains of the complaint.


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<u>9/25/2025</u>			<hr/> MELISSA A. CRANE, J.S.C.	
DATE				
CHECK ONE:	<input type="checkbox"/>	CASE DISPOSED	<input checked="" type="checkbox"/>	NON-FINAL DISPOSITION
	<input type="checkbox"/>	GRANTED	<input type="checkbox"/>	DENIED
APPLICATION:	<input type="checkbox"/>	SETTLE ORDER	<input checked="" type="checkbox"/>	GRANTED IN PART
CHECK IF APPROPRIATE:	<input type="checkbox"/>	INCLUDES TRANSFER/REASSIGN	<input type="checkbox"/>	SUBMIT ORDER
			<input type="checkbox"/>	FIDUCIARY APPOINTMENT
				<input type="checkbox"/>
				OTHER
				<input type="checkbox"/>
				REFERENCE