

**FFS Data Corp. v OLB Group, Inc.**

2025 NY Slip Op 33695(U)

September 29, 2025

Supreme Court, New York County

Docket Number: Index No. 654812/2024

Judge: Joel M. Cohen

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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 03M

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FFS DATA CORPORATION

Plaintiff,

- v -

THE OLB GROUP, INC.,

Defendant.

INDEX NO. 654812/2024

MOTION DATE 06/27/2025

MOTION SEQ. NO. 001

**DECISION + ORDER ON  
MOTION**

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HON. JOEL M. COHEN:

The following e-filed documents, listed by NYSCEF document number (Motion 001) 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25

were read on this motion to AMEND PLEADINGS.

Defendant The OLB Group, Inc. (“OLB”) moves for leave to amend its verified answer to assert counterclaims against Plaintiff FFS Data Corporation (“FFS”). FFS opposes the motion. For the following reasons, OLB’s motion is denied.

CPLR 3025(b) provides that “[a] party may amend his or her pleading, or supplement it by setting forth additional or subsequent transactions or occurrences, at any time by leave of court . . . .” “Motions for leave to amend should be freely granted, absent prejudice or surprise . . . unless the proposed amendment is palpably insufficient or patently devoid of merit” (*MBIA Ins. Corp. v Greystone & Co., Inc.*, 74 AD3d 499, 499 [1st Dept 2010]). “A proposed amended complaint that would be subject to dismissal *as a matter of law* is, by definition, ‘palpably insufficient or clearly devoid of merit’ and thus should not be permitted under CPLR 3025” (*Olam Corp. v Thayer*, 2021 NY Slip Op 30345[U], 3–4 [Sup Ct, NY County 2021]; *see also*

*Scott v Bell Atl. Corp.*, 282 AD2d 180, 185 [1st Dept 2001], *affd as mod sub nom. Goshen v Mut. Life Ins. Co. of New York*, 98 NY2d 314 [2002]).

This motion is denied because OLB's attempt to amend is an improper duplication of theories of recovery (albeit with different claim names) being pursued in a related action before this Court, *FFS Data Corp. v The OLB Group, Inc.*, Index No. 653247/2022 (Sup Ct, NY County) (the "Original Action"), and would be an end-run of the discovery cutoff in the Original Action. Therefore, this motion is properly denied because the amended claim would be subject to dismissal under CPLR 3211(a)(4) (*see JPMorgan Chase Bank, N.A. v Luxama*, 172 AD3d 1341 [2d Dept 2019] ["Pursuant to CPLR 3211 (a) (4), a court has broad discretion in determining whether an action should be dismissed based upon another pending action where there is a substantial identity of the parties, the two actions are sufficiently similar, and the relief sought is substantially the same. It is not necessary that the precise legal theories presented in the first action also be presented in the second action [so] long as the relief . . . is the same or substantially the same"]).

The Original Action, which involves the same parties here, was filed in 2022 and has been the vehicle for resolving the parties' disputes arising from their November 2021 Asset Purchase Agreement ("APA"). FFS initiated the Original Action to recover \$4 million that OLB failed to pay under the APA.<sup>1</sup> Since then, OLB has amended its answer or counterclaims three

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<sup>1</sup> In July 2024, FFS commenced this action seeking indemnification from OLB after FFS concluded its successful defense of a lawsuit by third party Merchant Payment Solutions ("MPS"), which MPS commenced against FFS due to OLB's failure to pay MPS under a sales agent commission agreement that OLB assumed in connection with the APA (*see Merchant Payment Solutions, LLC v. West Payments, LLC, et al.*, No. 1:23-cv-00438-DKW-WRP, in the United States District Court for the District of Hawaii (Watson, D.) (the "Hawaii Action"). Although this action is related to the Original Action insofar as the APA is the source of OLB's

times (Original Action, NYSCEF 21, 79, 341), and OLB's most recent amendment attempt, in April 2025, was denied as untimely and prejudicial (Original Action, NYSCEF 384).

In the Original Action, OLB brings counterclaims for (1) rescission for Fraud in the Inducement, (2) Fraud and Deceit; (3) Breach of Contract; (4) Breach of the Implied Covenant in the APA (5) Breach of the Implied Covenant in the Amendment, and (6) Aiding and Abetting Breach of Fiduciary Duty (NYSCEF 341). OLB alleges that FFS failed to transfer funds from an FFS-controlled account to OLB's sponsor account, prevented OLB's access to funds at that bank, and improperly diverted or transferred funds belonging to OLB from an account at that same bank, seeking "at least \$10 million" in damages (NYSCEF 341 at 42). The Counterclaims contains numerous allegations relating to "FFS's Misappropriation and Embezzlement of OLB's Funds" (NYSCEF 341 ¶¶152-153), "Interference with OLB's Agent Relationships" (NYSCEF ¶¶154-157), and embezzlement (NYSCEF 341 ¶¶158-165).

In this action, OLB's proposed amended allegations assert that "[s]ubsequent to OLB's purchase of the Merchant Portfolio and until OLB transferred the Merchant Portfolio to a new sponsor bank, FFS and OLB agreed that: (i) the net proceeds ("Net Proceeds") generated by the Merchant Portfolio would be deposited into an operating account (the "Operating Account") at First National Bank of Albany – Abilene (the "Bank") controlled and in the name of FFS; and (ii) FFS would immediately transfer the Net Proceeds to an account controlled by OLB" (NYSCEF 14 ¶50). OLB alleges that (1) FFS breached the parties' agreement by failing to transfer the full amount deposited into the Operating Account to OLB, that (2) FFS wrongfully converted those funds to a bank account owned by FFS, and that (3) FFS tortiously interfered

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indemnification obligations, FFS submits that there is otherwise no overlap between the two cases. That issue is not before the Court on the present motion.

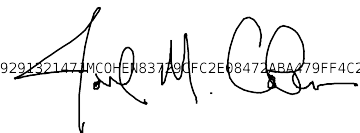
with OLB’s relationship with the Bank by intentionally causing the Bank to freeze the OLB Monies and to transfer the MSA Monies to FFS. (NYSCEF 14 ¶¶ 51-69). These are the same theories of “embezzlement” and “misappropriation” or “blocking access to” funds that OLB is pursuing in the Original Action through its counterclaims therein.

Discovery has already been conducted on these same allegations and theories in the Original Action, and Note of Issue has been filed. Granting this motion would effectively be giving OLB a second bite at discovery long after the discovery period in the Original Action closed. Allowing OLB to do so will prejudice FFS—and the Court—by forcing each to expend time and resources on the duplicative litigation of these issues.

Accordingly, it is

**ORDERED** that OLB’s Motion to Amend is **DENIED**; it is further

**ORDERED** that the parties appear for a preliminary conference on October 14, 2025, at 10:30 a.m., with the parties circulating dial-in information to chambers at SFC-Part3@nycourts.gov in advance of the conference.<sup>2</sup>

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JOEL M. COHEN, J.S.C.

<u>9/29/2025</u> DATE				
CHECK ONE:	<input type="checkbox"/> CASE DISPOSED	<input checked="" type="checkbox"/> DENIED	<input checked="" type="checkbox"/> NON-FINAL DISPOSITION	
APPLICATION:	<input type="checkbox"/> GRANTED		<input type="checkbox"/> GRANTED IN PART	<input type="checkbox"/> OTHER
CHECK IF APPROPRIATE:	<input type="checkbox"/> SETTLE ORDER		<input type="checkbox"/> SUBMIT ORDER	
	<input type="checkbox"/> INCLUDES TRANSFER/REASSIGN		<input type="checkbox"/> FIDUCIARY APPOINTMENT	<input type="checkbox"/> REFERENCE

<sup>2</sup> If the parties agree on a proposed preliminary conference order in advance of the conference date (consistent with the guidelines in the Part 3 model preliminary conference order, available online at <https://www.nycourts.gov/LegacyPDFS/courts/comdiv/NY/PDFs/Part3-Preliminary-Conference-Order.pdf>), they may file the proposed order and email a courtesy copy to chambers with a request to so-order in lieu of holding the conference.