

Newco Capital Group VI, LLC v MCA Resolve LLC

2026 NY Slip Op 30192(U)

January 13, 2026

Supreme Court, New York County

Docket Number: Index No. 650008/2024

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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NEWCO CAPITAL GROUP VI, LLC,

Plaintiff,

INDEX NO. 650008/2024

MOTION DATE _____

- v -

MOTION SEQ. NO. 004 005

MCA RESOLVE LLC, ELLIOTT DINOVI, BEN DINOVI,
DOMINIC R. DALE, LAW OFFICE OF DOMINIC DALE,
ESQ., and JOHN DOE COMPANIES 1-100,

**DECISION + ORDER ON
MOTION**

Defendants.

-----X

HON. ANDREA MASLEY:

The following e-filed documents, listed by NYSCEF document number (Motion 004) 67, 68, 69, 70, 71, 72, 73, 74, 75, 76, 92, 93, 94, 95, 96, 97, 98, 99, 100, 101, 104, 111, 112, 113, 116

were read on this motion to/for DISMISS.

The following e-filed documents, listed by NYSCEF document number (Motion 005) 84, 85, 86, 87, 88, 89, 90, 91, 102, 103, 105, 106, 107, 108, 109, 110, 114, 115, 117

were read on this motion to/for DISMISSAL.

In motion sequence 004, defendants MCA Resolve LLC, Elliot Dinov a/k/a Ari Dinov and Ben Dinov (collectively, MCA Defendants) move, pursuant to CPLR 3211(a) (1), (a) (7) and (a) (8), to dismiss the First Amended Complaint (FAC).

In motion sequence 005, defendants Dominick R. Dale, Esq. and Law Office of Dominick Dale, Esq (collectively, Dale Defendants) move, pursuant to CPLR 3211(a) (1), and (7), to dismiss the FAC. (MCA Defendants and Dale Defendants, collectively Defendants.)

Background

Unless indicated otherwise, the following facts are taken from the FAC and, for the purposes of these motions, are accepted as true.

Plaintiff Newco Capital Group VI, LLC, a New York entity, finances small merchants' receivables. (NYSCEF 60, FAC ¶ 2.) Plaintiff and the merchant enter into revenue purchase agreements (RPAs), whereby plaintiff provides financing to the merchant in exchange for a portion of the merchant's future receivables. (*Id.* ¶¶ 2, 25, 26.) Under the RPAs, plaintiff purchases and owns all of the merchant's receivables up to the amount of receivables purchased. (*Id.* ¶ 27.) The RPAs provide that the merchant collects plaintiff's share of receivables and holds them in trust as they are plaintiff's property. (*Id.* ¶ 28.) The merchant is required to remit a daily, weekly, or monthly amount to plaintiff, based on estimate of the average percentage of the merchant's receivables through ACH debits, plaintiff receives the agreed upon amount at regular intervals. (*Id.* ¶ 29.) The RPAs require the merchant "to deposit all of their receivables from the sale of goods and services into an approved deposit account and to enter an ACH authorization form permitting plaintiff to debit the designated account for the specified remittance amounts." (*Id.* ¶30.) The RPAs prohibit the merchant from "diverting their receivables to bank accounts other than the approved deposit account, blocking [p]laintiff's ACH debits or" interfering in any other way with plaintiff's ability to obtain the agreed upon remittances. (*Id.* ¶ 31.) Any such conduct is an event of default. (*Id.*) If there is such an event, plaintiff is "entitled to deem the entire balance of unremitted receivables immediately due" and initiate a legal action for the amount. (*Id.* ¶ 32.) Further, each RPA contains a security agreement whereby the merchant grants a security interest to plaintiff in and to the merchant's accounts and other assets and consents to plaintiff filing a UCC-1 financing statement. (*Id.* ¶ 37.)

Plaintiff alleges that the MCA Defendants tortiously interfered with the RPAs. Specifically, plaintiff alleges that the MCA Defendants falsely represented to merchants that the MCA Defendants have a proprietary software system and connections with the RPA funders, giving the MCA Defendants the “unique ability to negotiate lower regular remittances or obtain discounted payoffs” for the merchants, “and if they cannot obtain lower remittances or discounted payoffs,” the MCA Defendants will either sue the funders or defend litigation against the merchants through a network of attorneys. (*Id.* ¶ 41.) Plaintiff alleges, upon information and belief, that the MCA Defendants falsely stated that the RPAs are usurious loan agreements, violating the Racketeer Influenced and Corrupt Organizations Act. (*Id.* ¶ 43.) Plaintiff further alleges that the MCA Defendants falsely represented, that by enrolling in the MCA Defendants’ debt settlement program, the merchants will receive significant discounts on their debts with plaintiff. (*Id.* ¶ 44.)

Plaintiff denies that the MCA Defendants have any special connections with plaintiff. Rather, the MCA Defendants allegedly induce the merchants to breach the RPAs by directing the merchants to block plaintiff’s ACH debits and divert the merchants’ funds to MCA instead of plaintiff. (*Id.* ¶¶ 47-48.) Thus, the MCA Defendants gain control over the receivables, causing the merchants to breach their RPAs and pressurizing the RPA funders to settle at a discount. (*Id.* ¶ 49.)

Moreover, the MCA Defendants allegedly direct the merchants to cease their communications with plaintiff, by convincing the merchants that the RPAs are illegal. (*Id.* at ¶ 51.) They allegedly mislead the merchants into believing that their weekly or daily payments to the MCA Defendants will be used to resolve their debt, but the MCA

Defendants apply those funds first to the MCA Defendants' fees which accounts for 30% of the obligation. (*Id.* ¶ 53.)

According to plaintiff, the next step in the scheme is for the MCA Defendants to appoint the Dale Defendants, or other New York attorneys, to engage in frivolous litigation tactics to slow plaintiff's collection efforts and drive-up plaintiff's litigation and funding costs, enabling the MCA Defendants to recover their own fees without delivering on their promises of obtaining settlements with plaintiff. (*Id.* ¶ 55.) "The conduct of the [MCA] Defendants in diverting receivables leads merchants to double-exposure: the merchants pay receivables into accounts controlled by the [MCA] Defendants to cover their fees, but still have exposure to the RPA funders when the [MCA] Defendants fail to deliver on the promises of a settlement with the RPA funders and fail to utilize the merchants' funds to pay the obligations to [p]laintiff." (*Id.* ¶ 62.)

In this action, plaintiff asserts claims for (1) tortious interference with contracts (against the MCA Defendants), (2) aiding and abetting tortious interference with contracts (against the Dale Defendants), (3) civil conspiracy to tortiously interfere with contracts (against all defendants), (4) conversion (against the MCA Defendants), (5) aiding and abetting conversion (against the Dale Defendants), (6) civil conspiracy to convert plaintiff's property (against all defendants), (7) unjust enrichment (against the MCA Defendants), and (8) violation of Judiciary Law § 487 (against the Dale Defendants.)

Discussion

Legal standard

On a motion to dismiss pursuant to CPLR 3211 (a) (7), the court must “accept the facts as alleged in the complaint as true, accord plaintiff 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].)

To prevail on a CPLR 3211 (a) (1) motion to dismiss, the movant has the “burden of showing that the relied-upon documentary evidence resolves all factual issues as a matter of law and conclusively disposes of the plaintiff’s claim.” (*Fortis Fin. Servs. v Fimat Futures USA*, 290 AD2d 383, 383 [1st Dept 2002] [internal quotation marks and citation omitted].) “A cause of action may be dismissed under CPLR 3211 (a)(1) only where the documentary evidence utterly refutes [the] plaintiff’s factual allegations, conclusively establishing a defense as a matter of law.” (*Art and Fashion Group Corp. v Cyclops Prod., Inc.*, 120 AD3d 436, 438 [1st Dept 2014] [internal quotation marks and citation omitted].) For evidence to be considered documentary, it must be unambiguous and of undisputed authenticity. (*See Fontanetta v John Doe 1*, 73 AD3d 78, 86 [2nd Dept 2010].) Affidavits and deposition testimony do not constitute “the type of documentary evidence that may be considered on a motion pursuant to CPLR 3211 (a) (1).” (*Correa v Orient-Express Hotels, Inc.*, 84 AD3d 651, 651 [1st Dept 2011] [citations omitted].)

CPLR 3211 (a) (8) authorizes dismissal of “one or more causes of action asserted ... on the ground that ... the court has no jurisdiction of the person of the

defendant.” “On a motion pursuant to CPLR 3211(a) (8) to dismiss for lack of personal jurisdiction, the party asserting jurisdiction has the burden of demonstrating 'satisfaction of statutory and due process prerequisites.” (*Matter of James v iFinex Inc.*, 185 AD3d 22, 28-29 [1st Dept 2020] [citation omitted].) A plaintiff meets this burden by presenting affidavits and relevant documents. (*See Coast to Coast Energy, Inc. v Gasarch*, 149 AD3d 485, 486 [1st Dept 2017].)

MCA Defendants' Motion to Dismiss (Motion Sequence 004)

Dismissal under CPLR 3211(a)(8)

Lack of jurisdiction under CPLR 302(a)(1)

The MCA defendants challenge jurisdiction because it is undisputed that they are in Florida. (NYSCEF 60, FAC ¶¶12-14.) Plaintiff alleges that this court has personal jurisdiction over the MCA Defendants pursuant to CPLR 302(a)(1), (2), and (3)¹. Plaintiff alleges that the MCA Defendants (1) contracted to provide (a) services to the merchants in New York such as negotiating with plaintiff and (b) legal services through the Dale Defendants and other attorneys in New York, (2) engaged in tortious conduct in New York through the frivolous litigation activities of the Dale Defendants and other New York attorneys, and (3) committed tortious acts outside of New York that caused damage to plaintiff inside New York. (*Id.* ¶¶ 20-22.) As previously stated, the burden is on plaintiff when a defendant moves to dismiss pursuant to CPLR 3211 (a) (8) to “come forward with sufficient evidence, through affidavits and relevant documents, to prove the

¹ It is unnecessary to address jurisdiction under CPLR 302 (a) (3) because the court finds jurisdiction otherwise.

existence of jurisdiction.” (*State of NY v Vayu, Inc.*, 39 NY3d 330, 339 [2023] [internal quotation marks and citations omitted].)

CPLR 302 (a) (1)

CPLR 302(a)(1) “provides two distinct grounds for long-arm jurisdiction: where a defendant ‘transacts any business’ in the state and where a defendant ‘contracts anywhere to supply goods or services’ in the state.” (*D&R Global Selections, S.L. v Bodega Olegario Falcon Pineiro*, 29 NY3d 292, 297 [2017], quoting CPLR 302[a][1].) Both grounds require a twofold inquiry. (*Id.*) “First, the defendant must have purposefully availed itself of the privilege of conducting activities within the forum State by either transacting business in New York or contracting to supply goods or services in New York. Second, the claim must arise from that business transaction or from the contract to supply goods or services. (*Id.* [internal quotation marks and citation omitted].)

The MCA Defendants deny plaintiff’s assertion that the MCA Defendants contracted to provide services in New York by engaging the Dale Defendants and other New York attorneys, and thus, argue that the court lacks jurisdiction under CPLR 302 (a)(1). (NYSCEF 76, MCA Defendant’s MOL at 14.)

Plaintiff alleges that the MCA Defendants work with the Dale Defendants, and other New York attorneys, who engage in vexatious and frivolous litigation in New York courts to delay the collection efforts, drive up litigation costs and funding costs for the Plaintiff and other RPA funders (NYSCEF 60, FAC ¶ 48.) Plaintiff also alleges that together all defendants curated this scheme so that the MCA Defendants could collect their fees from merchants without delivering on their promise to obtain settlements from

plaintiff and other RPA funders for the merchants. (*Id.* ¶ 55.) In support of this allegation, instead of an engagement letter with merchants, plaintiff offers the Citadel Business Legal Plan Membership Agreement (Citadel Contract) which is effectively a legal services plan in which merchants are required to enroll as part of the MCA Defendants program. (*Id.* at ¶ 56.) Plaintiff alleges that the Dale Defendants are part of this network, and “upon information and belief” this network has entered into an agreement with the MCA Defendants to carry out the aggressive and improper litigation strategy. (*Id.* ¶ 57.) In support of this contention, plaintiff relies on 36 litigations in New York where plaintiff initiated an action against a merchant and the Dale Defendants, or other New York attorney, appeared for the merchant and allegedly engaged in improper legal tactics. (*Id.* ¶ 99, List of 36 litigations.)

Plaintiff asserts that through this arrangement the MCA Defendants have injected themselves into New York by allegedly engaging the Dale Defendants and other New York attorneys to become part of the legal services plan and by assigning or hiring such New York attorneys to appear for merchants in actions brought by Plaintiff against the merchants. (NYSCEF 101, plaintiff’s opposition MOL at 14.) The MCA Defendants provide the Citadel Contract to the merchants as part of the bundle of documents that the MCA Defendants require merchants to electronically sign including (1) Business Debt Resolution and Settlement Agreement (MCA Agreement) between MCA and merchant including (a) Schedule of Merchant’s Enrolled Debts, (b) Program Payment Schedule, (c) Limited Power of Attorney allowing MCA Defendants to communicate with the merchant’s creditors including plaintiff, and (d) Addendum to Agreement; (2) Citadel Contract; and (3) Trust Accounting Agreement and Disclosure Statement. (See

NYSCEF 71,² Poor Boy Outdoors Lawn Care, Leitchfield, KY, at 13; NYSCEF 72, J&M Civil Construction Services LLC, Decatur Texas, at 13; NYSCEF 73, Magic Broom Cleaning 360, Fuchsburg WI, at 13.) Significantly, in the Addendum to Agreement,

“Company [MCA] warrants that it shall appoint an attorney of its choice and pay all legal expenses, if any, associated with the civil defense of Client in connection with potential Breach of Contract claims related to Client’s merchant cash advances/loans. Company further warrants that it shall pay all legal expenses in the event that Client is named individually or in addition to Client’s corporate entity.” (*Id.* at 12/22³.)

Plaintiff asserts it is a reasonable inference that the MCA Defendants must have communicated (oral or written) with the New York network of attorneys to connect them to the merchant litigants. (NYSCEF 101, plaintiff’s opposition MOL at 9.) The court agrees that it is a reasonable inference that the attorneys must learn of the litigations from the MCA Defendants because the MCA Defendants “appoint[] an attorney” for the merchant. The fact that the MCA Defendants must appoint the attorneys undermines the MCA Defendant’s denial that MCA “has never retained the Dale Defendants to represent clients in MCA related litigation⁴”. (NYSCEF 76, MCA Defendant’s MOL at 15.) This relationship is corroborated by the Citadel Contract which incorporates the MCA agreement. (NYSCEF 60, FAC ¶¶67-68,112-13.) Paragraph 3 of the Citadel Contract entitled “**PLAN FEATURES AND BENEFITS**” and provides:

“Refer to your agreement with MCA RESOLVE, LLC (“[MCA] Agreement”). You engaged [MCA] to attempt to satisfy one (1) or more of your business debts as listed in the [MCA] Agreement (each listed debt a “Listed Debt” or all together

² Defendants filed NYSCEF 71 to 73 and are reminded to label exhibits in a meaningful way e.g., J&M Civil Construction Services LLC Business Debt Resolution and Settlement Agreement between MCA and merchant. Labeling an exhibit “exhibit” is useless.

³ NYSCEF pagination.

⁴ While true, this statement is misleading since the litigation against the merchants is with plaintiff not with the MCA Defendants.

“Listed Debts”).

“In the event that the original creditor named in any of the Listed Debts or an agent, holder and/or assignee of the original creditor, sues you, asserts its right to force you to participate in an arbitration proceeding in order to collect a Listed Debt or Listed Debts, or seeks or obtains a Judgment By Confession against you, or demands remittance from those individuals or entities who or which owe you money on the basis of a UCC Filing, THE CITADEL will provide you with an attorney, pay 100% of that attorney’s fees, and pay 100% of the court costs and/or arbitration-related fees and costs. NOTE: Non-Court costs, like paying a Court Reporter to attend a deposition, would be your responsibility.” (NYSCEF 71, 72, 73, Citadel Contracts at 14/22.⁵)

Accordingly, plaintiff demonstrates at least three transactions where the MCA Defendants were offering to provide services, including legal services, to merchants in New York followed by appointment of New York attorneys to provide legal services which meets the first prong: defendant contracts anywhere to supply services in New York.

To satisfy the second prong – claim arises from that transaction -- plaintiff has shown that its claims arise from both the transaction between the MCA Defendants and (1) a merchant and (2) the Dale Defendants and/or other New York attorneys. First, plaintiff demonstrates that the merchant agreements specifically list plaintiff, a New York resident, on each of the three agreements between MCA and the merchants. (See NYSCEF 71, Schedule of Enrolled Debts at 7, Capytal \$45,000;⁶ NYSCEF 72, Schedule of Enrolled Debts at 7 Apollo Funding \$193,000; NYSCEF 73 Schedule of Enrolled Debts at 7, Paladin Funding \$7,000.) Plaintiff alleges that in addition to Newco, it does business as Capytal.com, Apollo Funding Co. and Paladin Funding

⁵ NYSCEF pagination.

⁶ Plaintiff filed this complaint as Newco Group VI LLC d/b/a Capytal.com. (NYSCEF 1, Complaint.)

Group. (NYSCEF 60, FAC ¶11.) Accordingly, the merchant agreements with the MCA Defendants anticipate negotiation and/or litigation with plaintiff in New York. (See *Rich v Fox News Network LLC*, 18-CV-2223 (GBD)(SN), 2020 WL 6276026 *9 [SDNY Sept. 15, 2020] [Where Fox investigator befriended deceased family in Omaha, Nebraska to prepare story about death in Washington DC for Fox News Network located in New York, the court held “[w]hen a defendant's remote communications effectuate some purposeful business in New York, personal jurisdiction will be found even if a defendant never actually entered the state”].)

As to the agreements between the Defendants, plaintiff alleges that Defendants are aware of Plaintiff's D/B/As because of the many litigations, at least 36, between the parties many of which involve the DBAs. (NYSCEF 60, FAC ¶99.) Accordingly, when the MCA Defendants appoint the Dale Defendants or a New York attorney to represent merchants, Defendants know they will be doing business in New York with plaintiff because they have promised merchants owing debt to plaintiff that the MCA Defendants will negotiate or litigate. Indeed, the MCA Defendants appoint a New York attorney from the network to fulfill their promise to the merchants.

Accordingly, plaintiff has established personal jurisdiction over the MCA defendants under 302 (a) (1).

CPLR 302(a) (2)

CPLR 302 (a)(2) provides for long-arm jurisdiction over a nondomiciliary who “in person or through an agent ... commits a tortious act within the state.” Plaintiff asserts civil conspiracy jurisdiction under CPLR 302(a)(2) over the MCA Defendants through the acts of its agents—the New York attorneys, including the Dale Defendants. “The

acts of a coconspirator may, in an appropriate case, be attributed to a defendant for the purpose[s] of obtaining personal jurisdiction over that defendant" under CPLR 302(a)(2). (*Reeves v Phillips*, 54 AD2d 854, 855 [1st Dept 1976].) "[T]he agency requirement of section 302(a)(2) does not require a "formal agency relationship" to establish jurisdiction. Rather, plaintiff must convince the court that [the in-state actor] engaged in purposeful activities in this State in relation to [the] transaction for the benefit of and with knowledge and consent of the [out-of-state co-conspirator] and that [the out-of-state co-conspirator] exercised some control over [the in-state actor] in the matter." (*Bangladesh Bank v Rizal Commercial Banking Corp.*, 226 AD3d 60, 74 [1st Dept 2024] [citations and internal quotations omitted].) It is undisputed that the Dale Defendants and the New York attorneys, appointed and paid for by the MCA Defendants to appear in New York courts, are subject to New York jurisdiction from which the court can reasonably infer that their alleged litigation tactics were on behalf of the alleged conspiracy in New York. (See *Rich v Fox News Network LLC*, 18-CV-2223 (GBD)(SN), 2020 WL 6276026, *6⁷ [SDNY Sept. 15, 2020].)

The MCA Defendants object that plaintiff fails to allege a conspiracy and that even if plaintiff established a conspiracy, the MCA Defendants did not participate in it.

As discussed below, plaintiff alleges the elements for a conspiracy claim: "(1) an agreement between two or more parties; (2) an overt act in furtherance of the agreement; (3) the parties' intentional participation in the furtherance of a plan or

⁷ In *Rich*, the court analyzes conspiracy jurisdiction under CPLR 302(a)(2) but cites CPLR 302(a)(1).

purpose; and (4) resulting damage or injury.” (*Abacus Fed. Sav. Bank v Lim*, 75 AD3d 472, 474 [1st Dept. 2010] [internal quotation marks omitted].)

Likewise, as discussed below, plaintiff alleges that the “conspiracy involved the commission of an overt tortious act in New York and that the MCA defendants were part of the conspiracy.” (*Bangladesh Bank*, 226 AD3d at 74 [citations and internal quotations omitted].) The court rejects the MCA defendants’ conclusory argument and finds that Plaintiff has offered sufficient detail to support jurisdiction.

Accordingly, plaintiff has also established personal jurisdiction over the MCA Defendants under CPLR 302 (a) (2).

Federal Due Process

“Due process is satisfied when a foreign entity has minimum contacts with the State and exercise of jurisdiction does not offend traditional notions of fair play and substantial justice.” (*James*, 185 AD3d at 28-29.) Since New York’s long-arm statute is more restrictive than due process requirements, plaintiff has established minimum contacts with New York. (See *James*, 185 AD3d at 29.)

Plaintiff’s Failure to State a Claim

Ari and Ben Dinov are not personally liable

Plaintiff alleges that Ben Dinov and Elliot Dinov, as the Vice President and Head of Negotiations respectively, operate MCA Resolve as a business that depends “on tortiously interfering with RPA (or MCA) funders’ agreements with their merchant customers, under the guise of assisting merchants in debt settlement agreements.” (NYSCEF 60, FAC ¶ 39.) Further, plaintiff points to a letter signed by Elliot Dinov on October 16, 2023, and Paul Grafman, President of MCA Florida, wherein MCA Resolve

advised Magic Broom to not honor any UCC notices of assignment sent by plaintiff because they were invalid and need not to be paid. (*Id.* 72-73.) In addition, plaintiff alleges that Elliot Dinov and Ben Dinov also played a role in the Lashley case as managers coordinating the MCA Defendant's services. (*Id.*) “

However, Defendants object that plaintiff's claims against the Dinovs are conclusory and without any specificity as to whether to Elliot Dinov and Ben Dinov were acting in their individual capacity rather than their corporate capacity is conclusory. “A corporate officer is not personally liable for causing the corporation to terminate an employment contract unless his activity involves individual separate tortious acts.” (*Robbins v Panitz*, 61 NY2d 967, 969 [1984].)

Here, the Dinovs have not caused merchants to cancel contracts with the MCA Defendants but with plaintiff. Plaintiff alleges tortious interference by the MCA Defendants and this is not a breach of contract case. Accordingly, the claims against the Dinovs stand since, as discussed below, the tortious interference claim proceeds and plaintiff has alleged individual acts by the Dinovs as exemplified in documents.

Tortious Interference with Contractual Relationships (Claim 1)

To state a claim for tortious interference with contractual relations, NewCo must allege (1) a valid contract (the RPA) between plaintiff and a merchant; (2) MCA's knowledge of the RPA; (3) MCA's “intentional procurement of [merchant]'s breach of [the RPA] without justification,” (4) “actual breach of the [RPA]” and (5) “damages resulting therefrom.” (*Lama Holding Co. v Smith Barney Inc.*, 88 NY2d 413, 424 [1996] [citations omitted].)

Clearly, the RPA satisfies the first requirement.

The MCA Agreement demonstrates the MCA Defendant's knowledge of the RPA. creditors, including plaintiff, (NYSCEF 71, 72, 73, Merchants MCA Agreements, at 7/22⁸.)

As to the third requirement, the MCA Agreement alludes to the MCA Defendant's procurement of the merchants' breach of the RPA. (NYSCEF 71, MCA Agreement ¶¶ 3a, 4). The MCA Agreement contemplates the merchant's need for legal services to defend merchants in plaintiff's litigation against them for breach of the RPA when the merchant stops paying plaintiff as directed by the MCA Defendants. (NYSCEF 60, FAC ¶¶67-68,112-113.) The MCA Defendants appoint the attorney to represent the merchant and promises to pay that attorney. (*Id.* ¶113; NYSCEF 71, 72, 73, MCA Agreements at 11.) The Citadel Contract is part of the package. (NYSCEF 71,72,73, MCA Agreements at pp.11-12.) Plaintiff alleges that it was only because the MCA Defendants induced the merchants into believing that their debts would be reduced up to 60% that the merchants were influenced to divert their funds to Defendants (NYSCEF 60, FAC ¶5a.)

Indeed, the MCA Defendants' only objection here is to the "but-for causation" element, arguing that merchants would have inevitably breached their agreements with plaintiff due to their penury. (NYSCEF 76, MCA Defendant's MOL at 19.) For example, Lashley informed "MCA Resolve that Lashley's business is currently struggling with debt that cannot be sustained and is entirely unaffordable in the long term." (See NYSCEF 90, Lashley MCA Agreement.) However, a merchant's financial hardship does not necessitate a breach of the RPA because the RPA's reconciliation provision would allow

⁸ NYSCEF pagination.

a merchant to request that plaintiff adjust the remittance amount. (NYSCEF 60, FAC ¶ 3.) Accordingly, plaintiff has also sufficiently pled injury caused by the merchant's breach of the RPA and the motion to dismiss tortious interference with the contracts is denied.

Civil Conspiracy (Claim 3)

Plaintiff alleges that MCA Defendants participated in a civil conspiracy to tortiously interfere with plaintiff's RPAs and convert plaintiff's receivables. (NYSCEF 60, FAC ¶ 166.) "[T]o establish a claim of civil conspiracy, the plaintiff must first demonstrate the primary tort, plus the following four elements: (1) an agreement between two or more parties; (2) an overt act in furtherance of the agreement; (3) the parties' intentional participation in the furtherance of a plan or purpose; and (4) resulting damage or injury." (*Abacus Fed. Sav. Bank v Lim*, 75 AD3d 472, 474 [1st Dept. 2010.]) As discussed above, plaintiff alleges a claim for tortious interference with contract. In addition, generally, plaintiff alleges each element of civil conspiracy, including (1) an agreement between MCA Defendants and the Dale Defendants (NYSCEF 60, FAC ¶¶ 56, 58-59, 113-14, 61, 69, 72, 126); (2) overt acts in furtherance of the agreement (¶¶ 167-69); (3) intentional participation in furthering the scheme (¶¶ 192-94); and (4) damages (¶¶ 134-41.)

As to the first element -an agreement between defendants - plaintiff offers the MCA agreement between the merchant and the MCA Defendants which is an essential predicate to the MCA Defendant's agreement with the network of attorneys who MCA Defendants appoint and pay for actions between merchants and plaintiff or other RPA

fundere. (See NYSCEF 71, Addendum to the MCA Agreement at 12/22.⁹) As discussed above, it is reasonable to infer that the attorney does not appear in court for the merchant without communication, agreement, and participation in the MCA Defendants' network of attorneys. Moreover, as discussed above, the MCA Agreement and Citadel Contract are literally intertwined. Indeed, as proof of such relationship, plaintiff points to the Dale Defendants' statement to Lashley that "they were not being paid by the MCA Defendants," though the MCA Agreement incorporated by the Citadel Contract requires the MCA Defendants to pay the New York attorney. (*Id.* ¶126.) (NYSCEF 71, Citadel Contract at 14/22¹⁰.)

As to the second and third elements -overt acts in furtherance of the agreement and participation in the scheme – plaintiff alleges that the MCA Defendants make false statements to the merchants to trick them into entering the MCA Agreement. Next, the Dale Defendants, or other New York attorneys, appear in court on behalf of the merchants but allegedly without any communication with the merchants and but necessarily communicate with the MCA Defendants. (NYSCEF 60, FAC ¶¶ 58-59, 61, 69, 72, 78.) Finally, the attorneys allegedly use abusive litigation tactics to stall plaintiff's litigation against the merchant. (*Id.* ¶¶ 76 – 97.)

As to damages, plaintiff alleges that it "has been unable to collect a substantial amount of the receivables to which they are entitled under the merchant agreements—which require merchants to hold the receivables in trust for plaintiff in their designated bank account until debited by plaintiff—and are forced to incur greater collection costs

⁹ NYSCEF pagination.

¹⁰ NYSCEF pagination.

and legal fees pursuing these receivables.” (NYSCEF 60, FAC ¶134.) As to civil conspiracy and its predicate tortious interference with contract, the MCA Defendants do not challenge plaintiff’s assertion of damages.

Having alleged a conspiracy to commit a predicate tort, under CPLR 302(a)(2) long arm jurisdiction, plaintiff must also establish that Defendants are members of the conspiracy that resulted in the tortious act in New York. Plaintiff must show: “(a) the defendant had an awareness of the effects in New York of its activity; (b) the activity of the co-conspirators in New York was to the benefit of the out-of-state conspirators; and (c) the co-conspirators acting in New York acted at the direction or under the control, or at the request of or on behalf of the out-of-state defendant.” (*Bangladesh Bank v Rizal Commercial Banking Corp.*, 226 AD3d 60, 74 [1st Dept 2024].) As discussed above, plaintiff alleges that MCA Defendants were aware of the effects of their activity in New York because they entered contracts to negotiate debt settlement on behalf of merchants which listed plaintiff, a New York domiciliary, as a creditor. (NYSCEF 60, FAC ¶¶44-51,70,72,105; NYSCEF 71, 72, 73, MCA Agreements pp.7.11) Further, pursuant to the MCA Agreement with merchants, the MCA Defendants appointed attorneys to appear in New York courts. Therefore, plaintiffs have alleged the MCA Defendants awareness of the effects in New York.

Plaintiff alleges that the attorneys’ vexatious litigation in New York courts on behalf of merchants was for the benefited the MCA Defendants, the out-of-state co-conspirator. (NYSCEF 60, FAC ¶¶60.) Plaintiff alleges that the MCA Defendants’ scheme involves delaying debt settlement with plaintiff, all the while the MCA

¹¹ NYSCEF pagination.

Defendants direct the merchants to divert more funds to the MCA. (*Id.* ¶ 4-5.) Indeed, according to plaintiff, the goal of the litigation part of the scheme is to delay plaintiff's collections from merchants' receivables as MCA Defendants simultaneously and continuously funnel enriches itself. (*Id.* ¶¶5-7,52-60.) The converted funds are delivered over time to the MCA Defendants. With Lashley, for example, plaintiff commenced litigation on December 12, 2022. (*Id.* ¶116.) According to the MCA Agreement with Lashley, payments began on December 2, 2022, and were to continue for 19 months—during the pendency of the litigation vexatiously dragged out by Dale Defendants. (NYSCEF 60, FAC ¶106) According to plaintiff, by the time the MCA Defendants “milked Lashley dry” of its receivables, the merchant went bankrupt, and plaintiff will likely never recover. (*Id.* ¶¶122-25,132.)

Finally, plaintiff relies on the MCA Agreement to establish that litigation was done at the direction or under the control of the MCA Defendants who appoint the attorneys, pay them, and direct them since the merchants allegedly have no communication with the attorneys. (See NYSCEF 71, MCA Agreement.)

The court finds that plaintiff's allegations are anything but conclusory or vague and thus rejects the MCA Defendants' objections to civil conspiracy. Therefore, the motion to dismiss the third cause of action is denied.

Conversion (Claim 4)

Plaintiff alleges that the MCA Defendants converted plaintiff's receivables due from merchants which plaintiff owns and in which plaintiff has a security interest. (See NYSCEF 101, plaintiff's opposition MOL at 19-21.) Conversion occurs “when someone, intentionally and without authority, assumes or exercises control over personal property

belonging to someone else, interfering with that person's right of possession. (*Colavito v NY Organ Donor Network, Inc.*, 8 NY3d 43, 50 [2006].) Two key elements of conversion are (1) plaintiff's possessory right or interest in the property and (2) defendant's dominion over the property or interference with it, in derogation of plaintiff's rights. (*Id.*) Further, "an action will lie for the conversion of money when there is a specific, identifiable fund and an obligation to return or otherwise treat in a particular manner the specified fund in question." (*Mfrs. Hanover Trust Co. v Chem. Bank*, 160 AD2d 113,124 [1st Dept 1990].) Therefore, parties must seek recovery of "specific sum of money but do not need to specify the bills". (*Thys v Fortis Sec. LLC*, 74 AD3d 546, 547 [1st Dept 2010].) [citations omitted.] Consequently, if the alleged converted money cannot be described or identified as a specific chattel, it cannot support a claim of conversion. (See *9310 Third Ave. Assoc. v Schaffer Food Serv. Co.*, 210 AD2d 207, 208 [2d Dept 1994].)

Defendants challenge this claim as lacking specificity. As damages, plaintiff demands an "amount to be determined at trial" which is insufficient. (NYSCEF 60, FAC ¶ 184.) If the complaint does not seek damages for a specific converted amount from a particular account, but instead seeks damages to be determined at trial, such is not a claim for conversion. (See *Picard v Madoff (In re Bernard L. Madoff Inv. Sec. LLC)*, 458 BR 87, 87 [Bankr SDNY 2011].)

However, plaintiff holds perfected security interests in the merchants' receivables which can be the subject of a cause of action. (See generally *Goldberger v Rudnicki*, 94 AD3d 1047 [2d Dept 2012].) Further, "the relevant question at the motion-to-dismiss stage is not whether Plaintiffs have alleged an exact sum of money in their complaint."

(*HSCM Bermuda Fund Ltd. v Newco Capital Group VI LLC*, 619 F Supp 3d 434, 443 [SDNY 2022].) “Rather, the question is whether the money alleged to have been converted is specifically ‘identifiable’ or, put another way, whether it is *capable* of ‘being described or identified in the same manner as a specific chattel.’” (*Id.*) For example, Lashley’s RPA with Capytal actually identifies a specific fund and states an amount. (NYSCEF 56, Complaint in Lashley’s case at 16/16¹².)

Accordingly, the motion to dismiss conversion is denied.

Unjust Enrichment (Claim 7)

Plaintiff alleges that the MCA Defendants “were enriched at plaintiff’s expense by retaining and converting for themselves, or diverting to others, or obtaining fees derived from, the merchants’ receivables.” (NYSCEF 60, FAC ¶ 200.) The elements of such a claim are “(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., Inc. v Rieder*, 19 NY3d 511, 516 [2012].)

Defendants object to this claim as duplicative of plaintiff’s conversion claim. (NYSCEF 76, MCA Defendant’s MOL at 27.) The court agrees. While plaintiff’s statement of the law, is true, it does not save plaintiff’s inadequate claim. Accordingly, the motion to dismiss unjust enrichment is granted and the seventh cause of action is dismissed.

Punitive Damages

Plaintiff seeks punitive damages by alleging that Defendants’ conduct is malicious, recklessly dishonest, and suggestive of criminal indifference to civil obligations.” Plaintiff argues that Defendants’ conduct meets this bar. (NYSCEF 60,

¹² NYSCEF pagination.

FAC ¶¶5-7,39-62,97,134-41.) Defendants contend that this claim should be dismissed because the plaintiff has failed to allege facts showing that MCA Defendants engaged in misconduct with Lashley especially, willful, wanton, and reckless. (NYSCEF 76, MCA Defendant's MOL at 27¹³.) Plaintiff references a pattern of behavior that suggests that Defendants acted in concert to induce the merchants to divert their receivables to Defendants' accounts and breach plaintiff's RPAs. In addition, the Dale Defendants may have violated 22 NYCRR 1215.1 which requires a letter of engagement between. (See generally *Seth Rubenstein, P.C. v Ganea*, 41 AD3d 54 [2d Dept 2007].) Therefore, the punitive damages claim stands.

Improper Usage of FAC as a Discovery Tool

Defendants describe the FAC as a "fishing expedition" premised on plaintiff's speculation that the Defendants interfered with the contracts between plaintiff and the merchants. Further, according to the MCA Defendants, plaintiff is improperly using the FAC to seek discovery about the merchants for plaintiff's 36 cases. The court finds that plaintiff has stated independent viable causes of action in this case. To the extent that Defendants are concerned that plaintiff is privy to discovery in this action that it would not get in its merchant actions, defendants can execute confidentiality agreements. Discovery from this case cannot be used in other cases.

The court also notes that the MCA Defendant's reliance on CPLR 3102 (c) is twisted since it is a list of when discovery maybe sought. It is plaintiff's prerogative when to seek disclosure before bringing an action, during or after trial. At this motion to

¹³ The court notes that Defendants have restricted their punitive damages argument to Lashley whereas plaintiff has sought punitive damages for interference with all merchants.

dismiss stage, plaintiff has sustained all its claims. Plaintiff has stated independent viable causes of action in this case. Accordingly, motion 004 is granted in part to the extent unjust enrichment is dismissed and denied as to tortious interference, conversion, and civil conspiracy.

Dale Defendants' Motion to Dismiss (Moton Sequence 005)

Attorney Immunity

Throughout its motion, the Dale Defendants argue that they are immune from civil or liability because they are attorneys who acted in good faith for their clients. (NYSCEF 91, Dale Defendants MOL at 5.) “[A]n attorney acting in good faith is generally not liable to third persons for the acts of his clients, an attorney may be held liable to third parties for wrongful acts if guilty of fraud or collusion or of a malicious or tortious act.” (*Bankers Tr. Co. v Cerrato, Sweeney, Cohn, Stahl & Vaccaro*, 187 AD2d 384, 385 [1st Dept. 1992] [citations omitted].) However, good faith is a fact issue that cannot be determined on a motion to dismiss, and plaintiff’s allegations are sufficient to raise an issue of fact. For example, plaintiff alleges that the Dale Defendants and the merchants did not have conventional attorney-client relationships because there were no engagement letters, nor communication between attorney and client. (NYSCEF 60, FAC ¶¶59.) Further, in Lashley’s case, the Dale Defendants stated that “they were not being paid by the MCA Defendants,” and allegedly the Dale Defendants withdraw from their representation and directed Lashley to file for bankruptcy. (NYSCEF 60, FAC ¶¶ 5, 75, 76, 80, 95.) The court must accept plaintiff’s allegations as true. Accordingly, the Dale Defendants’ motion to dismiss on this basis is denied.

Aiding and Abetting in Tortious Interference with Contract (Claim 2)

“To assert a claim for aiding and abetting, [a] plaintiff must allege (1) the existence of an underlying fraud; (2) defendant’s actual knowledge of the underlying fraud; and (3) defendant’s provision of substantial assistance in the commission of the underlying fraud.” (See *Oster v Kirschner*, 77 AD3d 51, 56 [1st Dept 2010].) An attorney is not immune from liability if the attorney assists the client’s tort (*Id.*) Similarly, the same elements would apply to the tort of tortious interference in contractual relationships.

The Dale Defendants take issue with the substantial assistance prong. “Substantial assistance occurs when a defendant affirmatively assists, helps conceal or fails to act when required to do so, thereby enabling the breach to occur.” (*Kaufman v Cohen*, 307 A. D.2d 113, 126 [1st Dep’t 2003].) The Dale Defendants insist that they did not provide substantial assistance to the MCA Defendants and communicated with the merchants. Of course, these are fact issues that cannot be determined on a motion to dismiss.

Further, the Dale Defendants assert that the breaches had already occurred before the Dale Defendants came on the scene. For example, the Dale Defendants point to Lashley’s proceedings which plaintiff initiated on December 12, 2022, but it was not until December 30, 2022, that the Dale Defendants appeared for Lashley. (NYSCEF 91, Dale Defendant’s MOL at 16.) However, plaintiff alleges that the Dale Defendants late appearance was part of the scheme to delay the litigation and plaintiff’s collection efforts. (NYSCEF 102, plaintiff’s opposition MOL at 27.) Again, the court must accept plaintiff’s allegations as true for this motion.

Furthermore, the Dale Defendants insist that they never represented the MCA Defendants but represented the merchants through non-party Citadel. (NYSCEF 91, Dale Defendant's MOL at 11.) Agreed, but plaintiff does not allege that the Dale Defendants represent the MCA Defendants. Rather, plaintiff alleges that the MCA Defendants appoint the Dale Defendants, pay them and direct them in the New York merchant litigations. (See e.g. NYSCEF 90, Lashley MCA Agreement at 18/22¹⁴.) This provision of the MCA Agreement establishes the MCA Defendants' direct control over the Dale Defendants legal services and plaintiff offers more than 36 cases wherein plaintiff initiated a case against a merchant and the Dale Defendants intervened to support its argument. (NYSCEF 60, FAC ¶ 99.)

The Dale Defendants assert that all of their services were "routine", and the mere filing of an answer cannot be deemed "frivolous and vexatious." (*Id.* at 12.) Plaintiff alleges much more than filing an answer. Plaintiff alleges discovery abuses, delays and possible violations of 22 NYCRR 1215.1 which mandates written letters of engagement. (NYSCEF 60, FAC ¶¶ 80-95.) (See generally *Seth Rubenstein, P.C. v Ganea*, 41 AD3d 54 [2d Dept 2007].)

Accordingly, the Dale Defendants' motion to dismiss the aiding and abetting tortious interference with contractual relationships is denied.

Aiding and Abetting Conversion (Claim 3)

As the court allows plaintiff's claim on conversion to proceed, plaintiff's claim of aiding and abetting conversion against the Dale Defendants shall also proceed. Plaintiff has alleged a relationship among the Defendants which includes the MCA Defendants'

¹⁴ NYSCEF pagination.

converting funds from plaintiff while the Dale Defendants allegedly engage in delay tactics to allow MCA Defendants more time to collect more funds.

Accordingly, the motion to dismiss aiding and abetting conversion is denied.

Civil Conspiracy to Tortiously Interfere with Contracts (Claim 4)

“[T]o establish a claim of civil conspiracy, the plaintiff must demonstrate the primary tort, plus the following four elements: (1) an agreement between two or more parties; (2) an overt act in furtherance of the agreement; (3) the parties’ intentional participation in the furtherance of a plan or purpose; and (4) resulting damage or injury.” (*Abacus Fed. Sav. Bank v Lim*, 75 AD3d 472, 474 [1st Dept. 2010].) The only argument that the Dale Defendants advance is that conspiracy is not an independent cause of action and hence should be dismissed. (NYSCEF 91, Dale Defendant’s MOL at 22.) It is true that conspiracy is not an independent cause of action and requires a predicate tort established, but as discussed above, the court finds that plaintiff has sufficiently pled tortious interference with plaintiff’s RPAs.

Accordingly, the motion to dismiss civil conspiracy to commit tortious interference with the RPA between the merchants and Plaintiff is denied.

Judiciary Law Violation (Claim 5)

Under Judiciary Law § 487(1), attorneys who engage in “any deceit or collusion, or consent[] to any deceit or collusion, with intent to deceive the court or any party” are liable “to the party injured [for] treble damages, to be recovered in a civil action.” (*Bill Birds, Inc. v Stein Law Firm, P.C.*, 35 NY3d 173, 177 [2020].) “To mislead the court or a party is to deceive it; and, if knowingly done, constitutes criminal deceit under the statute.” (*Id.*) Plaintiff must allege “egregious conduct or a chronic and extreme pattern

of behavior' on the part of the defendant attorneys that caused damages." (Facebook, Inc. v DLA Piper LLP (US), 134 AD3d 610 [1st Dept 2015]) [citation omitted].) Such claims must be alleged with specificity i.e. sufficient facts to establish that the defendant attorney intentionally deceived plaintiff or the court in a pending litigation, resulting in damages. (*Jean v Chinitz*, 163 AD3d 497, 498 [1st Dep't 2018].)

Plaintiff alleges that the Dale Defendants violated Judiciary Law 487(1) by "repeatedly purporting to appear on behalf of merchants with whom they have never communicated or from whom they never obtained engagement letters and asserting defenses and counterclaims that were frivolous and never approved by their merchant-clients." (NYSCEF 60, FAC ¶ 204.) Plaintiff asserts that such conduct "violates Judiciary Law § 487(1), since it amounts to deceit or collusion on the courts and [p]laintiff." (*Id.*) It is egregious, according to plaintiff, because such conduct has occurred at least 36 times. (*Id.* at 205.)

The Dale Defendants object to plaintiff's pleading this claim on "information and belief." (NYSCEF 91, Dale Defendant's MOL at 23.) While it is true that specificity is required for this type of claim, the court notes that eight out of plaintiff's 211 allegations are on information and belief and none of them have to do with this cause of action. The Dale Defendants are also correct to note that single acts of deceit are insufficient for this claim, but the court notes that plaintiff has identified 36 similar cases. (See NYSCEF 60, FAC ¶ 99, 204- 211.)

Likewise, the court cannot overlook allegations that the Dale Defendants' have no engagement letters as required 22 NYCRR 1215.1 with their merchant clients and allegations that the merchants did not authorize the Dale Defendants to represent them

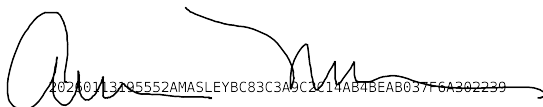
or that the Dale Defendants abandoned their clients. (*Id.* ¶¶ 93, 115, 117.) One such incident, occurred in *Docks v Orlando Inc.*, where the Dale Defendants filed a motion to compel plaintiff to respond to discovery and appear for deposition, but the court denied it because the Dale Defendants had never met-and-conferred in good faith or even served a deposition notice. (*Id.* ¶91.) Therefore, plaintiff’s claim for the violation of Judiciary Law § 478 (1) stands and motion 005 is denied.

Accordingly, it is

ORDERED that motion 004 is granted in part to the extent unjust enrichment is dismissed and denied in part as to tortious interference, conversion, civil conspiracy; and it is further

ORDERED that motion 005 is denied; and it is further

ORDERED that the Defendants shall file answers by February 13 2026.



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1/13/2026
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