Boldyn Networks Tr. US LLC v Mazzarella
2026 NY Slip Op 31265(U)
March 26, 2026
Supreme Court, New York County
Docket Number: Index No. 652165/2025
Judge: Phaedra F. Perry-Bond
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SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY

PRESENT: **HON. PHAEDRA F. PERRY-BOND** **PART** **35**

Justice

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INDEX NO.	652165/2025
MOTION DATE	06/03/2025
MOTION SEQ. NO.	001

BOLDYN NETWORKS TRANSIT US LLC

Plaintiff,

- v -

ANTHONY MAZZARELLA,

Defendant.

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DECISION + ORDER ON MOTION

The following e-filed documents, listed by NYSCEF document number (Motion 001) 6, 7, 8, 9, 10, 11, 16, 17, 18

were read on this motion to/for DISMISS .

Upon the foregoing documents, Defendant's motion to dismiss pursuant to CPLR 3211(a)(1) and (a)(7) is denied.

I. Background

Plaintiff designs, builds, and operates cellular and Wi-Fi networks for a variety of customers, including the Metropolitan Transit Authority's ("MTA") Wi-Fi platform. Defendant was formerly employed by Plaintiff as Vice President of Analytics and Advertising. Defendant's responsibilities included selling advertising on Defendant's Wi-Fi networks directly or indirectly through third parties.

On February 10, 2022, Defendant negotiated an Advertising Platform Participation Agreement (the "Agreement") between Plaintiff and non-party P3 Transit Network, LLC ("Transit") whereby Transit would solicit and secure digital advertising on the MTA's Wi-Fi platform. Pursuant to the Agreement, Transit would retain forty percent of the advertising revenue collected and would pay the remaining sixty percent of revenue to Plaintiff. The Agreement required Transit to, within thirty days of the end of each month, to provide Plaintiff with statements of account detailing the total advertising revenue raised, and identifying plaintiff's 60% share of that revenue.

Allegedly, Transit allowed an unauthorized affiliate to sell advertising space to Unicoin, a cryptocurrency company, without Plaintiff's knowledge or permission, for a monthly fixed fee. In May and June of 2022, Transit provided two invoices to Defendant for advertising Transit allegedly placed on behalf of Unicoin. The invoices each reflected Unicoin was billed for a fixed fee of $700,250.00. Defendant then submitted the invoices to Plaintiff's accounting department so Plaintiff could determine the revenue it was entitled to recoup from Transit, but also to calculate commission owed to Defendant. However, the two invoices were allegedly fake. Defendant allegedly asked for commission based on the two invoices, but he was informed a lump sum commission could only be paid based on advertising sales and revenue collected based on clicks and views – not on a monthly fixed fee. Allegedly, Defendant then asked Transit to provide a second set of invoices that were not charged based on a fixed fee but based on views and clicks. The revised May invoice was allegedly increased from the fixed fee of $700,250.00 to $889,317.50, to correspond with fabricated numbers of view and clicks listed in the invoice, while the June invoice was allegedly decreased from the fixed fee of $700,250.00 to $511,182.50. The calculations were allegedly altered to allow Defendant to collect a fraudulent lump sum commission.

Defendant also allegedly knew Transit had breached its contracts with Plaintiff, but Defendant tried to hide Transit's breaches from Plaintiff. Defendant allegedly hid from Plaintiff that Transit was allowing free advertising on Plaintiff's Wi-Fi without authorization from Plaintiff, and knew Transit did not report other advertising revenue to Plaintiff. Defendant also allegedly shared proprietary information with Transit without authorization to do so.

After Plaintiff allegedly learned of the fraudulent invoices it conducted an internal investigation and terminated Defendant for cause. During Defendant's exit interview, he allegedly conceded he did not rightfully earn the commission and promised to repay it, but he has not paid to date. Here, Plaintiff sues Defendant for fraud, conversion, unjust enrichment, and pursuant to the faithless servant doctrine.

Defendant moves, pre-answer, to dismiss, claiming he validly earned his commission. Defendant also claims that Plaintiff has not alleged damages for purposes of a fraud claim are insufficient. Defendant argues the conversion claim must be dismissed because there is no property at issue and there is no demand for return of property. Defendant asserts that the unjust enrichment claim fails because there exists a valid contract between Plaintiff and Defendant. Finally, Defendant argues the faithless servant claim is inadequately alleged.

In opposition, Plaintiff submits an Amended Complaint bolstering its allegations. Moreover, Plaintiff argues the documentary evidence does not refute Plaintiff's allegations because Defendant did not "earn" his commission – he procured it through fraud. Plaintiff argues the unjust enrichment claim is sufficiently pled in the alternative and the commission plan relied on by Defendant does not constitute a contract governing the subject matter of this lawsuit. Plaintiff further asserts the unjust enrichment and conversion claims are sufficient to withstand a pre-answer motion to dismiss.

II. Discussion

A. Standard

When reviewing a pre-answer motion to dismiss for failure to state a claim, the Court must give the Plaintiff the benefit of all favorable inferences which may be drawn from the pleadings and determines only whether the alleged facts fit within any cognizable legal theory (*Sassi v*

Mobile Life Support Services, Inc., 37 NY3d 236, 239 [2021]). All factual allegations must be accepted as true (*Allianz Underwriters Ins. Co. v Landmark Ins. Co.*, 13 AD3d 172, 174 [1st Dept 2004]). A motion to dismiss based on documentary evidence is appropriately granted only when the documentary evidence utterly refutes the factual allegations, conclusively establishing a defense as a matter of law (*Goshen v Mutual Life Ins. Co. of New York*, 98 NY2d 314 [2002]). The documentary evidence must be unambiguous, of undisputed authenticity, and its contents must be undeniable (*VXI Lux Holdco S.A.R.L. v SIC Holdings, LLC*, 171 AD3d 189, 193 [1st Dept 2019]).

B. CPLR 3211(a)(1)

Defendant's documentary evidence, which consists solely of his 2022 and 2023 Commission Plans (collectively the "Commission Plans"), do not irrefutably rebut Plaintiff's allegations. Although Defendant argues that the terms of Commission Plans establish that he earned the commissions paid to him, it fails to address in any way that the commissions paid were not earned but procured through Defendant's alleged fraud. The Court of Appeals has repeatedly held that "one may not profit from his own wrong" nor retain the benefits derived therefrom (*Alami v Volkswagen of Am.*, 97 NY2d 281, 286 [2002] citing *Riggs v Palmer*, 115 NY 506 [1889]; *see also Piccirilli v Benjamin*, 226 AD3d 1233, 1238 [3d Dept 2024). Defendant's argument regarding New York labor law § 191(1)(c) is likewise unavailing as that statute does not protect individuals who allegedly procured commission through fraud. For purposes of a pre-answer motion to dismiss, Defendant's documentary evidence is insufficient.

C. CPLR 3211(a)(7)

The pre-answer motion to dismiss based on the sufficiency of the pleadings is likewise denied. Defendant only challenges whether Plaintiff suffered any damages from the alleged fraud, arguing that Plaintiff only alleges it had to pay commission in one lump sum rather than an amortized commission over a two-year time frame. But this is not what Plaintiff alleges – Plaintiff instead alleges that all invoices submitted were fraudulent and no commission should have been paid – whether over a two-year time frame or in a lump sum. For purposes of a pre-answer motion to dismiss, where the circumstances constituting the alleged fraud have been stated in detail, the alleged damages are sufficient to withstand a pre-answer motion to dismiss (*see GSCP VI EdgeMarc Holdings, L.L.C. v ETC Northeast Pipeline, LLC*, 192 AD3d 454, 456 [1st Dept 2021] citing *Solomon Capital, LLC v Lion Biotechnologies, inc.*, 171 AD3d 467, 469 [1st Dept 2019] [damages in fraud claim are not required to be pleaded with particularity]).

The conversion claim is likewise adequately alleged. There are specific factual allegations that Plaintiff demanded the lump sum commissions returned, that during an exit interview Defendant agreed to return the commissions, and to date Defendant has still not paid back any of the commissions (*see, e.g. Family Health Management, LLC v Rohan Developments, LLC* 207 AD3d 136, 144-146 [1st Dept 2022]). Moreover, as this is a pre-answer motion to dismiss, Plaintiff is entitled to plead in the alternative unjust enrichment, as at this stage Plaintiff "need not elect [its] remedies and may pursue a quasi-contractual claim for unjust enrichment, as an alternative claim" (*see Silver v Baker Botts L.L.P.*, 235 AD3d 437, 438 [1st Dept 2025] quoting *Chowaiki & Co. Fine Art Ltd. v Lacher*, 115 AD3d 600, 601 [1st Dept 2014]).

Finally, the motion to dismiss the faithless servant claim is denied. The faithless servant doctrine provides that an employee or agent who is faithless in the performance of his or her duties is not entitled to recover salary or commission (*see Two Rivers Entities, LLC v Sandoval*, 192 AD3d 528, 529 [1st Dept 2021]). Accepting the allegations as true, the claims that Defendant intentionally hid Transit's breaches from Plaintiff and shared proprietary and confidential information without authorization are sufficient for purposes of a pre-answer motion to dismiss to allege a faithless servant claim.

Accordingly, it is hereby,

ORDERED that Defendant's motion to dismiss is denied, and within twenty days of entry, counsel for Defendant shall file an Answer to Plaintiff's Amended Complaint; and it is further

ORDERED that the parties shall meet and confer and submit a proposed compliance preliminary order to the Court via e-mail, but in no event shall the proposed compliance conference order be submitted any later than May 5, 2026; and it is further

ORDERD that if the parties elect to explore resolution through the Court's sponsored ADR program as opposed to through discovery, they shall notify the Court accordingly; and it is further

ORDERED that within ten days of entry, counsel for Plaintiff shall serve a copy of this Decision and Order, with notice of entry, on all parties via NYSCEF.

This constitutes the Decision and Order of the court.

3/26/26
DATE

HON. PHAEDRA F. PERRY-BOND, 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