

Louis Vuitton N. Am., Inc. v Telesoft LLC

2026 NY Slip Op 31372(U)

April 3, 2026

Supreme Court, New York County

Docket Number: Index No. 161479/2024

Judge: Kathleen Waterman-Marshall

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SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY

PRESENT: HON. KATHLEEN WATERMAN-MARSHALL PART 31M

Justice

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LOUIS VUITTON NORTH AMERICA, INC.

Plaintiff,

- v -

TELESOFT LLC,

Defendant.

INDEX NO. 161479/2024

MOTION DATE 02/28/2025

MOTION SEQ. NO. 001

DECISION + ORDER ON MOTION

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The following e-filed documents, listed by NYSCEF document number (Motion 001) 6, 7, 8, 9, 10, 11, 14, 15, 16, 17, 18, 19, 20, 21

were read on this motion to/for DISMISS

Upon the foregoing documents and following on-the-record oral argument on March 3, 2026, the motion by defendant Telesoft LLC d/b/a Calero-MDSL ("Calero") for an order, pursuant to CPLR 3211(a)(7), dismissing the first through fourth, and sixth through ninth causes of action in the complaint, is granted in part.

The Court spread its Decision upon the record, the transcript of which is So-Ordered, is attached hereto and the findings and conclusions incorporated at length herein.

Briefly, plaintiff Louis Vuitton North America, Inc. ("LV") seeks to recover damages it allegedly sustained as a result of Calero's alleged breach of the parties' "Master Service Agreement," dated July 12, 2021 ("the Agreement"), as well as Calero's alleged tortious and fraudulent conduct related thereto. At bottom, this is a billing dispute that implicates contract interpretation principles, specifically as relates to the manner in which "Gain Share Fees" ("GS Fees") are assessed and billed under the Agreement.

The complaint consists of 125 paragraphs, the first 57 of which contain the predicate factual allegations, and asserts nine separate causes of action. In pertinent part, the complaint alleges that the parties entered into the Agreement, to which is attached a "Statement of Work" ("the SOW") that, inter alia, detailed Calero's services to be performed, defined various terms, and set forth the manner in which Calero would earn its fees, including GS Fees. The complaint alleges, in the main, that LV engaged Calero (a vendor bill-paying service) to, essentially, manage and pay LV's telecommunications and mobility expense vendor invoices and obtain refunds and/or credits for LV from its vendors. More specifically, Calero licensed to LV its software, and provided to LV its services, addressed to "invoicing, auditing, processing and usage management for recurring enterprise expenses with [LV's] Vendors." The complaint alleges that Calero improperly calculated and billed LV for GS Fees in violation of (i) the terms of the SOW (i.e., without providing monthly reports or substantiating the claimed identified

savings upon which the GS Fees were assessed), and (ii) in violation of Calero's agreement not to bill or collect on the disputed GS Fees while the parties attempted to resolve the issue; and otherwise inflated its bills. The complaint further alleges that Calero misappropriated for itself certain funds meant to pay LV's vendors, causing disruption in essential services to LV and shutting its business down for a day. In addition, the complaint alleges that Calero's pre-printed standard form addressed to consumers set forth billing for fees in one way, but that Calero billed for fees in another, amounting to a "bait and switch" approach in violation of the General Business Law § 349.

Upon those factual allegations, LV asserts causes of action, in chronological order, for: (1) violation of General Business Law ("GBL") § 349, by reason of Calero's pre-printed forms and alleged pattern and practice of deceptive conduct in assessing GS Fees on Identified Savings and not Realized Savings, as set forth in the Agreement; (2) fraud, by reason of Calero's alleged knowing misrepresentation that it would not invoice LV for GS Fees during the parties' fees negotiation, and issuance of invoices billing for such GS Fees; (3) conversion, by reason of Calero's alleged unlawful interference with LV's possessory right to funds it provided to Calero to pay its vendors; (4) tortious interference with business relationships, in that Calero allegedly used LV's funds to pay itself instead of LV's vendors, causing vendors to interrupt or cease services to LV for one day; (5) breach of contract, based upon Calero's alleged improper and inflated billing and alleged diversion of funds; (6) promissory estoppel, based upon Calero's alleged promise not to invoice or collect GS Fees during the parties' negotiations, upon which LV relied; (7) declaratory judgment, seeking a declaration that the SOW required GS Fees to be assessed on Realized Savings and not Identified Savings; (8) money had and received, by reason of Calero's alleged use for itself of LV's funds that were meant for LV's vendors; (9) unjust enrichment, for the same reasons asserted on the eighth cause of action for money had and received.

As set forth in the Decision, the law on CPLR § 3211(a)(7) dismissal motions is well-known and simply stated. In assessing whether the complaint states a cause of action, it is afforded the benefits of liberal construction, a presumption of truth, and any favorable inference (*see e.g. M & E 73-75, LLC v 57 Fusion LLC*, 189 AD3d 1 [1st Dept 2020]). The motion must be denied if, from the four corners of the pleadings, "factual allegations are discerned which taken together manifest any cause of action cognizable at law" (*Polonetsky v Better Homes Depot*, 97 NY2d 46, 54 [2001] [internal quotation omitted]).

Presuming the truth of the allegations in the complaint and affording it a liberal construction, it fails to state causes of action for: violation of GBL § 349, conversion, tortious interference with business relations, declaratory judgment, money had and received, and unjust enrichment. Consequently, the first, third, fourth, seventh, eighth, and ninth causes of action are dismissed.

As to the GBL § 349 claim, the gravamen of the complaint is simply the breach of a purely private contract between LV on the one hand, and Calero on the other (*see Preston v Northside Collision-Dewitt, LLC*, 158 AD3d 1127 [4th Dept 2018] [complaint alleging breach of contract to repair vehicle does not state GBL § 349 claim because "private contract disputes, unique to the parties, . . . [do] not fall within the ambit of the statute"]). The allegation that

Calero uses a pre-printed contract and engages in a “pattern and practice” of deceptive conduct with respect to its assessment of GS Fees under the Agreement directed to “consumers at large,” is insufficient. Contrary to LV’s argument, *Himmelstein, McConnell, Gribben, Donoghue & Joseph, LLP v Matthew Bender & Co., Inc.*, 37 NY 3d 169, 173 (2021), does not compel a different result. First, the contract in *Himmelstein* was truly consumer-oriented, directed to consumers-at-large, in that the defendant publisher marketed and advertised its Tanbook “for sale to the general public, including through its website and a public, online shopping service” (*id.* at 178). Here, the services provided under the Agreement are not marketed to the general public and instead addressed to a limited audience of sophisticated businesses (*see Singh v City of New York*, 40 NY3d 138, 148, *reargument denied*, 40 AD3d 975 [2023]). Second, even assuming the Agreement could be construed as a consumer-oriented contract within the ambit of GBL § 349 (which it cannot), the complaint fails to allege that any part of the Agreement and/or Calero’s acts in assessing its fees thereunder, were materially misleading.

LV’s claim for conversion is also dismissed. “[C]onversion takes place 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 New York Organ Donor Network, Inc.*, 8 NY3d 43, 49-50 [2006]). “An action for conversion of money may be made out ‘where there is a specific, identifiable fund and an obligation to return or otherwise treat in a particular manner the specific fund in question’” (*Thys v Fortis Sec. LLC*, 74 AD3d 546 [1st Dept 2010] quoting *Manufacturers Hanover Trust Co. v Chemical Bank*, 160 AD2d 113, 124 [1990]). LV’s complaint does not set forth an identifiable fund that Calero allegedly converted. Rather, it merely alleges that Calero diverted unspecified “funds” otherwise due to be paid to LV’s vendors, without identifying the vendors or the amounts. In addition, the conversion claim is duplicative of the breach of contract claim, and dismissed for that additional reason (*see Peters Griffin Woodward, Inc. v WCSC, Inc.*, 88 AD2d 883 [1st Dept 1982]).

The complaint fails to state a cause of action for tortious interference with business relationships based upon Calero’s alleged failure to pay LV’s vendors, which resulted in a disruption (turn-off) of those vendors’ services for eight hours. In order to state this claim, LV must allege that it “had business relations with a third party; [Calero] interfered with those business relations; [Calero] acted with the sole purpose of harming [LV] or by using unlawful means; and [] resulting injury to [LV’s] business relationship” (*see N. State Autobahn, Inc. v Progressive Ins. Grp. Co.*, 102 AD 5, 21 [2012]). Here, the complaint does not specifically identify LV’s business relationships allegedly harmed, or that Calero’s use of funds to pay its fees was unlawful or done with the “sole purpose” of harming LV’s business relationships, or the manner in which such relationships were harmed. Thus, the tortious interference with business relationships claim is dismissed, with leave to replead non-conclusory, specific allegations necessary to state a claim.

LV’s cause for a declaratory judgment, determining the manner in which Calero’s GS Fees should be assessed, calculated, invoiced, and paid under the Agreement, is subsumed under the breach of contract cause of action, and dismissed (*see Upfront Megatainment, Inc. v Thiam*, 215 AD3d 576, 578 [1st Dept 2023] [plaintiffs’ declaratory judgment claim properly dismissed as duplicative “as plaintiffs have an ‘adequate, alternative remedy in another form of action’ – namely, the second cause of action for breach of contract”]).

Finally, LV’s last two causes of action for money had and received, and unjust enrichment – which are based on the same facts and are two sides of the same coin – sound in quasi-contract, and are dismissed as there is “a valid and enforceable written contract governing” the parties’ dispute (*Clark-Fitzpatrick, Inc v Long Is. R.R. Co.*, 70 NY2d 382 [1987] [“The existence of a valid and enforceable written contract governing a particular subject matter ordinarily precludes recovery in quasi contract for events arising out of the same subject matter”]).

Accordingly, it is hereby

ORDERED that Calero’s motion to dismiss all but the breach of contract cause of action in the complaint, is granted in part; and it is further

ORDERED that the first cause of action, for violation of GBL § 349; the third cause of action, for conversion; the seventh cause of action, for a declaratory judgment; the eighth cause of action, for money had and received; and the ninth cause of action, for unjust enrichment, are dismissed; and it is further

ORDERED that the fourth cause of action, for tortious interference with business relations, is dismissed with leave to replead; and it is further

ORDERED that LV shall serve and file an amended complaint, which eliminates the dismissed causes of action and may replead the fourth cause of action, within fourteen (14) days of the date of this Decision and Order; and it is further

ORDERED that Calero shall serve and file an answer to the amended complaint within twenty (20) days of the date of the amended complaint; and it is further

ORDERED that this matter is scheduled for a Preliminary Conference on May 13, 2026 at 10:00 a.m. Counsel are reminded of the Part 31 Rules, specifically those governing conferences and conference orders.

4/3/2026
DATE


KATHLEEN WATERMAN-MARSHALL,
J.S.C.

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