

NW Media Holdings Corp. v IBT Media Inc.

2023 NY Slip Op 30966(U)

March 28, 2023

Supreme Court, New York County

Docket Number: Index No. 652344/2022

Judge: Melissa 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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NW MEDIA HOLDINGS CORP., NEWSWEEK LLC, NEWSWEEK DIGITAL LLC, NEWSWEEK MAGAZINE LLC, NEWSWEEK PUBLISHING LLC, NW DIGITAL LLC, NW MAGAZINE LLC,	INDEX NO. <u>652344/2022</u>
	MOTION DATE <u>12/15/2022</u>
	MOTION SEQ. NO. <u>006</u>

Plaintiff,

- v -

IBT MEDIA INC., OLIVET UNIVERSITY, WORLD OLIVET
ASSEMBLY, INC., ETIENNE UZAC, DAVID JANG,
YOUNSEOK CHOI,

**DECISION + ORDER ON
MOTION**

Defendant.

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The following e-filed documents, listed by NYSCEF document number (Motion 006) 56, 57, 90, 103, 104, 105, 116, 119, 120

were read on this motion to/for

DISMISSAL

In Motion Sequence No. 06, Defendant Etienne Uzac (“Defendant” or “Uzac”) moves pursuant to CPLR 3211(a)(7) to dismiss the complaint’s causes of action against him. For the following reasons, Defendant’s motion is granted in part and denied in part.

FACTUAL AND PROCEDURAL BACKGROUND

The court refers to its decision and order resolving Motion Sequence No. 08 for a more complete recitation of this matter’s factual background (*see* Decision and Order, NYSCEF Doc. No. 154). However, the court writes briefly on the allegations specific to Uzac.

Plaintiff alleges that NW Media Holdings Corp. (“NW Media”) purchased the media/magazine business Newsweek from Defendant IBT Media Inc. (“IBT”). Uzac is a founder and owner of IBT, and served as IBT’s CEO, President, and Chairman from 2006 through at least 2018 (Complaint, NYSCEF Doc. No. 2, ¶ 30). The relevant allegations against Uzac relate

primarily to the alleged copying and deletion of Plaintiffs' files from the Newsweek Google Workspace ("Workspace") in August 2020.

Plaintiffs allege that following the 2018 separation of IBT and Newsweek, Newsweek continued to maintain files for both companies in the Workspace (Complaint, ¶ 141). They assert that after Newsweek issued a litigation hold in August 2020, Uzac told NW Media's President and current Newsweek CEO, Dev Pragad ("Pragad"), "that if documents were subpoenaed from Google for certain IBT and/or Newsweek accounts, that would be a 'problem'" (Complaint, ¶ 144). Uzac then allegedly "indicated to Pragad that they needed to find someone to delete the accounts containing problematic information," and Pragad refused (Complaint, ¶ 144). Subsequently, at the direction of Defendant David Jang ("Jang"), Uzac allegedly coordinated with Defendant Jonathan Davis ("Davis") to "carry out the deletions" (Complaint, ¶ 145). Plaintiffs allege that Davis downloaded and exported files from the Workspace, then Defendant Younseok (Titus) Choi ("Choi") deleted 1.8 terabytes' worth of data (Complaint, ¶¶ 146, 154).

Additionally, the complaint alleges that "Defendants IBT and Uzac are continuing to steal from Newsweek by using Davis' ongoing access to Newsweek confidential information—via his role as a director and officer of NW Media Holdings—to benefit IBT" (Complaint, ¶ 160). Uzac allegedly "sought to arrange a global call so that Newsweek's business and financing plans could be shared with the larger Community in the hope that IBT can copy and implement Newsweek's winning strategy and compete with Newsweek"¹ (Complaint, ¶ 166). While the complaint does not allege that Uzac has actually used Plaintiffs' confidential information yet, it alleges that IBT

¹ Plaintiffs assert in the complaint that "IBT, along with its operating affiliate IBTimes LLC (collectively, the 'IBT Entities'), is part of a network of entities associated with Defendant David Jang's ('Jang') church, named the Community" (Complaint, ¶ 4).

and Uzac “intend to exploit” the “proprietary business strategies” and “confidential financial information” that Davis has passed along to them (Complaint, ¶¶ 168-169).

Plaintiffs filed the complaint on July 6, 2022. The complaint alleges causes of action against Uzac for contractual indemnification and unjust enrichment as IBT’s alter ego (Counts I and II), aiding and abetting conversion (Count III), conspiracy as to conversion (Count IV), aiding and abetting trespass to chattels (Count V), conspiracy as to trespass to chattels (Count VI), and misappropriation of trade secrets (Count VII).

DISCUSSION

Uzac has moved to dismiss the causes of action against him pursuant to CPLR 3211(a)(7). The court denies Uzac’s motion to dismiss as to Count III but otherwise grants Uzac’s motion.

1. Alter Ego Causes of Action

The court grants Uzac’s motion to dismiss Counts I and II for contractual indemnification and unjust enrichment. These causes of action seek to hold Uzac liable as the alter ego of IBT. However, the court has already dismissed IBT from this action entirely on the basis that Pragad had no authority to commence a direct action in the name of Plaintiffs against IBT (*see* December 28, 2022 Decision and Order, NYSCEF Doc. No. 127). Because IBT has been dismissed from this action, the claims against Uzac as IBT’s alter ego must also be dismissed (*see Ferro Fabricators, Inc. v 1807-1811 Park Ave. Dev. Corp.*, 127 AD3d 479, 480 [1st Dept 2015] [“[A]lter-ego liability is not an independent cause of action.”]).

2. Trespass to Chattels Causes of Action

The court also grants Uzac’s motion to dismiss Counts V and VI for aiding and abetting trespass to chattels and conspiracy as to trespass to chattels. These causes of action relate to allegations that Uzac aided or conspired in furtherance of Choi’s trespass to chattels through the

deletion of documents from the Workspace (*see* Complaint, ¶¶ 218-237). However, the court has already held that the alleged deletion, if anything, constituted conversion and not trespass to chattels (*see* March 22, 2023 Decision and Order [resolving MS 08], NYSCEF Doc. No. 154). Plaintiffs' claim for trespass to chattels is dismissed as to Uzac for the same reasons the court dismissed that claim against Defendant Choi in Motion Seq. No. 08 (*see id.*). Further, without an underlying tort, Plaintiffs' claims for aiding and abetting trespass to chattels and conspiracy relating to trespass to chattels against Uzac must be dismissed (*see Abacus Federal Savings Bank v Lim*, 75 AD3d 472, 474 [1st Dept 2010]; *Habberstad v Revere Securities LLC*, 183 AD3d 532, 533 [1st Dept 2020]).

3. Aiding and Abetting Conversion

The court denies Uzac's motion to dismiss the cause of action for aiding and abetting conversion. A claim for aiding and abetting conversion requires "the existence of a conversion by the primary tortfeasor, actual knowledge, and substantial assistance" (*William Doyle Galleries, Inc. v Stettner*, 167 AD3d 501, 505 [1st Dept 2018]; *Sayles v Ferone*, 137 AD3d 486 [1st Dept 2016]; *Dickinson v Igoni*, 76 AD3d 943, 945 [2d Dept 2010] [dismissing a cause of action for conversion and subsequently dismissing a cause of action for aiding and abetting conversion because "such a claim stands or falls with the underlying tort"] [internal quotation marks and citations omitted]). Here, the court has already found that the complaint states a claim for an underlying conversion against Choi (March 22, 2023 Decision and Order). Therefore, the first element is satisfied for purposes of this motion.

Additionally, the complaint sufficiently pleads actual knowledge. In order to state a claim for aiding and abetting conversion, a plaintiff must allege that the defendant had "actual knowledge that the person who directly converted the plaintiff's property did not own that property" (*Starr*

Indemnity & Liability Co. v Global Warranty Group, LLC, 165 AD3d 1308, 1309 [2d Dept 2018]; *Torrance Const., Inc. v Jaques*, 127 AD3d 1261, 1263 [3d Dept 2015], citing *Weisman, Celler, Spett & Modlin v Chadbourne & Parke*, 271 AD2d 329 [1st Dept 2000]). Uzac argues that Plaintiffs did not meet their burden because NW Media “did not have superior possession over the data [in the Workspace], and therefore Mr. Uzac certainly could not have had ‘actual knowledge’ of any alleged conversion” (Opening Mem., NYSCEF Doc. No. 57, p. 11). This argument fails for two reasons. First, as this court has already held, the ownership of the data on the Workspace presents an ultimate issue of fact that cannot be determined at the motion to dismiss stage (*see* March 22, 2023 Decision and Order, p. 8). Second, the complaint does contain allegations that, accepted as true, raise an inference of actual knowledge (*see Sayles v Ferone*, 137 AD3d 486 [1st Dept 2016]; *Dragons 516 Ltd. v Knights Genesis Inv. Ltd.*, 77 Misc3d 1223(A), *15 [Sup Ct, NY County Jan 6, 2023] [allegations against one defendant were sufficient to state a claim for aiding and abetting conversion where the complaint contained allegations giving rise to a “strong inference” of actual knowledge]).

The complaint here alleges that Jang “directed Uzac and/or Davis to destroy any Newsweek records that might cause harm or embarrassment to him or his Church or subject IBT to liability” (Complaint, ¶ 16 [emphasis added]). The complaint additionally alleges that Uzac told Pragad that if documents were subpoenaed from Google for “certain IBT and/or Newsweek accounts, that would be a ‘problem’” (Complaint, ¶ 144 [emphasis added]). These allegations suggest knowledge that at least some of the documents at issue were “Newsweek” documents.

Indeed, the allegation that, prior to the alleged deletion of files, Uzac approached Pragad—the President of the company that owns Newsweek—and indicated that they “needed to find someone to delete the accounts containing problematic information” (Complaint, ¶ 144) suggests

knowledge that IBT did not own the documents. If Uzac believed that all of the documents belonged to IBT, it is not clear why Pragad's permission would have been necessary. Uzac's argument that the same interaction suggests that Uzac "viewed the data as collectively owned between NW Media and IBT" (Reply Mem., NYSCEF Doc. No. 116, p. 8) merely presents an alternate interpretation that raises an issue of fact.

Additionally, the complaint sufficiently alleges the element of substantial assistance. A plaintiff can satisfy the substantial assistance element through allegations of "concealing, or failing to act when required to do so, enabling the harm to proceed" (*Sayles*, 137 AD3d at 486; *see also William Doyle Galleries, Inc. v Stettner*, 167 AD3d 501, 506 [1st Dept 2018] [finding that plaintiff sufficiently alleged substantial assistance through pleading that defendant "enabled" the conversion through "verbal and written assurances"])). Contrary to Uzac's argument, the complaint alleges that Uzac took an active role in the alleged conversion. In particular, the complaint alleges that Uzac "coordinated with Davis to locate and destroy any problematic documents or communications" and "assist[ed] Davis to identify documents to be deleted" (Complaint, ¶¶ 205-206, 226-227).

Uzac's citation to *Sanford/Kissena Owners Corp. v Daral Props., LLC* (84 AD3d 1210 [2d Dept 2011]) (Reply Mem., p. 9) is inapposite. There, the court found that the plaintiff failed to state a cause of action for aiding and abetting breach of fiduciary duty because the allegation that the defendant "urged" another defendant to induce the plaintiff to sign an agreement was insufficient to establish the element of substantial assistance (*id.* at 1212). Here, the allegations against Uzac go beyond mere "urging" other defendants to delete documents from the Workspace. Rather, Uzac allegedly helped identify which documents to delete (Complaint, ¶ 206).

Uzac's attempt to distinguish case law cited in Plaintiffs' opposition by arguing that the defendants in those cases "allegedly took specific actions that were critical to the execution of the primary tort" (Reply Mem., p. 10) is unpersuasive. First, the complaint does allege that Uzac assisted in identifying documents for deletion, something that would clearly be "critical" to the actual deletion if true. Second, Uzac fails to cite any case law for the proposition that conduct does not amount to "substantial assistance" if the primary tort "could have been completed" without it (Reply Mem., p. 10). Even if Uzac is correct that Choi could have deleted the documents from the Workspace without his assistance, the allegations that Uzac "coordinated with Davis to locate and destroy" documents and helped "identify" those documents are enough to state a cause of action with respect to the substantial assistance element.

Thus, the court denies the motion to dismiss Plaintiffs' claim for aiding and abetting conversion as to Uzac.

4. Conspiracy

However, the court grants Uzac's motion to dismiss the cause of action for conspiracy as to conversion. A claim for conspiracy is subject to dismissal where it is duplicative of an aiding and abetting cause of action (*see Kew Gardens Hills Apt. Owners, Inc. v Horing Welikson & Rosen, P.C.*, 35 A.D.3d 383, 386 [2d Dept 2006] [dismissing conspiracy to breach fiduciary duty claim as duplicative of the aiding and abetting claim], citing *American Baptist Churches of Metro. N.Y. v Galloway*, 271 A.D.2d 92 [1st Dept 2000]; *Tatintsian v Vorotyntsev*, 2019 WL 1746004, *11 [SDNY Apr 18, 2019] [dismissing conspiracy claim where it "ar[ose] out of precisely the same conduct as [the] aiding and abetting claims"]). Here, the aiding and abetting allegations against Uzac (*see e.g.* Complaint, ¶ 205 ["Defendant Uzac conspired and coordinated with Davis to locate and destroy any problematic documents or communications in the Newsweek Google

Workspace.”]) are essentially the same as the conspiracy allegations against Uzac (see e.g. Complaint, ¶ 213 [“Jang and Uzac agreed, with the help of Davis, to locate and destroy any problematic documents or communications in the Newsweek Google Workspace.”])).

As such, the conspiracy cause of action is dismissed as duplicative.

5. Misappropriation of Trade Secrets

The court also grants Uzac’s motion to dismiss the cause of action for misappropriation of trade secrets, without prejudice, for the same reasoning set forth on the record regarding Davis’s motion to dismiss the misappropriation of trade secrets cause of action in the *Pragad v Davis et al.* (652334/2022) action (December 15, 2022 Oral Argument Transcript, pp. 132-134), i.e., because Plaintiffs have failed to allege damages.


Accordingly, it is

ORDERED that Defendant Uzac’s motion to dismiss, Motion Sequence No. 06, is denied as to the cause of action for aiding and abetting conversion (Count III); and it is further

ORDERED that Defendant’s motion to dismiss is otherwise granted in its entirety; and it is further

ORDERED that Defendant Uzac must serve an answer to the complaint within 20 days of the date of this decision and order.

03/28/2023
DATE


MELISSA CRANE, J.S.C.

CHECK ONE:

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APPLICATION:

CHECK IF APPROPRIATE: