

## Appellate Division Affirms Dismissal of Complaint Alleging Receipt of Converted Funds by Carter Ledyard's Clients

June 07, 2021

On June 1, 2021, the New York Appellate Division, First Department, issued a decision affirming a [2020 lower court decision](#), which granted Carter Ledyard's motion to dismiss all claims against two Carter Ledyard clients for, among other things, conversion, fraudulent conveyance and unjust enrichment.

Carter Ledyard's clients had received a refund of a deposit advanced for a piece of commercial real estate from the seller's attorney's attorney trust (IOLA) account after the transaction failed to close. Unbeknownst to Carter Ledyard's clients, the seller's attorney stole IOLA funds that had been paid by another buyer who contracted to buy the same property. When the seller's attorney was unable to pay back the new buyer's deposit, the buyer commenced an action that alleged that all recipients of payments from the attorney's IOLA account after the new buyer deposited funds in the IOLA account, including the repayment to Carter Ledyard's clients, should be liable to the buyer.

The Appellate Division ruled that the conversion claim by the buyer against Carter Ledyard's client could not stand because the funds in the seller's attorney's IOLA account were commingled with other depositor's funds: "As the account is unsegregated, plaintiff's funds, upon their transfer therein, became commingled with monies that were already in it, rendering them no longer specifically identifiable" and therefore not subject to a claim for conversion of money. Further, the complaint failed to adequately allege that Carter Ledyard's clients may be liable for aiding and abetting the seller's attorney's conversion of the buyer's funds because the allegations that Carter Ledyard's clients knew of his wrongdoing were based on conjecture. The Appellate Division ruled that the fraudulent conveyance claims failed because the buyer failed to allege that the transfer to Carter Ledyard's clients was made without consideration (since it was merely a refund of amounts previously deposited). Finally, the Appellate Division ruled that Carter Ledyard's clients could not be liable for unjust enrichment since they too were victims of the attorneys' scheme and there is nothing unjust about permitting them to retain the funds.

Carter Ledyard attorney Jacob H. Nemon wrote the brief and argued the appeal, with contribution from attorney Leonardo Trivigno.

### related professionals

**Jacob H. Nemon** / Partner

D 212-238-8728

[nemon@clm.com](mailto:nemon@clm.com)

**Leonardo Trivigno** / Partner

D 212-238-8724

[trivigno@clm.com](mailto:trivigno@clm.com)

---