

Appellate Division Affirms Dismissal of Litigation Funding Abuse Suit Against Carter Ledyard Clients

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On September 30, 2020, the Appellate Division, Second Department affirmed the dismissal of an action by several merchant cash advance (MCA) companies and their principals against Carter Ledyard's clients Fox Capital Group Inc. and Commonwealth Merchant Advance Inc., and others, for allegedly providing third-party litigation funding to the plaintiffs' customers to sue the plaintiffs.

The third-party litigations at issue were brought against the plaintiffs by their small business customers (merchants), who claimed that that the plaintiffs engaged in fraudulent conduct. In some cases, the merchants sought injunctions to prevent the plaintiffs from entering confessions of judgment.

The Appellate Division found that the plaintiffs' failed to allege the essential elements of their primary claim for tortious interference with contract, such as identifying the relevant merchant contracts or how they were breached, explaining how the defendants induced the breaches or asserting that the contracts would not have been breached by the merchants absent the defendants' alleged conduct. The Appellate Division also affirmed the dismissal of the plaintiffs' other claims for tortious interference with prospective contract, abuse of process, prima facie tort and permanent injunction.

Carter Ledyard previously represented Fox and Commonwealth in the trial court, and obtained the dismissal decision as well as a decision denying the plaintiffs' motion for a preliminary injunction, which sought to prohibit the defendants from providing funding to the merchants to sue the plaintiffs. Carter Ledyard attorneys Jacob H. Nemon and Jeffrey S. Boxer represented Fox and Commonwealth.

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