

Court Dismisses Lawsuit Claiming Litigation Funding Abuse Against Carter Ledyard Clients

April 29, 2019

New York Supreme Court Justice Leon Ruchelsman issued a decision on April 9, 2019 in *Influx Capital LLC et al. v. Pershin et al.*, dismissing all claims against Carter Ledyard's merchant cash advance (MCA) industry clients, Fox Capital Group Inc. and Commonwealth Merchant Advance Inc., for allegedly providing third-party litigation funding to the plaintiffs' customers to sue the plaintiffs. The plaintiffs are competing MCA companies and their principals.

The third-party litigations – in which Carter Ledyard's clients are not parties – were brought against the plaintiffs by their small business customers (merchants). The merchants claim that the plaintiffs engaged in fraudulent conduct, and in some cases sought injunctions to prevent the plaintiffs from entering confessions of judgment against the merchants.

In the *Influx Capital* matter, the plaintiffs claimed that an individual from the MCA industry used Fox and Commonwealth to fund the merchant litigations and cause the merchants to default on their MCA agreements with the plaintiffs. The plaintiffs also sued that individual and one of the law firms involved in the merchant actions. Carter Ledyard moved together with the other defendants to dismiss the lawsuit.

In granting dismissal, Justice Ruchelsman found "[t]he complaint does not describe how the defendants interfered, what 'nefarious and improper' conduct they undertook to harm any business relations and how they encouraged and funded [merchants] to sue the plaintiffs." He further ruled that "claims for tortious interference cannot be based upon litigation filings" unless "the litigation is a 'sham' that was 'objectively baseless.'" At this stage, there is no basis to conclude any of the four lawsuits fall within the exception [under which] tortious interference claims can be based upon litigation."

Justice Ruchelsman issued a February 25, 2019 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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