

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

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INTERNATIONAL CARDS COMPANY, LTD., :  
Plaintiff, :  
:  
-against- :  
:  
MASTERCARD INTERNATIONAL INC., :  
Defendant. :  
----- X

13 Civ. 2576 (LGS)

**OPINION AND ORDER**

LORNA G. SCHOFIELD, District Judge:

A jury found for Plaintiff International Cards Company, Ltd. (“ICC”) on its conversion claim against Defendant MasterCard International Inc. (“MasterCard”) and awarded ICC \$2.78 million in damages. MasterCard moves for judgment as a matter of law under Federal Rule of Civil Procedure 50(b) on ICC’s claim. For the following reasons, the motion is denied.

**I. BACKGROUND**

**A. Factual Background**

Familiarity with the allegations and procedural history is assumed. *See Int’l Cards Co. v. MasterCard Int’l Inc.*, No. 13 Civ. 2576, 2016 WL 3039891, at \*1–3 (S.D.N.Y. May 26, 2016). The facts below are taken from undisputed evidence presented at trial.

ICC is a financial services company based in Jordan. MasterCard is a technology company that maintains a payment network to facilitate the processing of debit and credit card payment transactions. MasterCard’s payment network is based on the “four-party system.” The four parties are: (1) cardholders that use MasterCard-branded cards to purchase goods or services; (2) merchants that accept MasterCard-branded cards as payment for goods or services; (3) issuers, the financial institutions that issue the MasterCard-branded payment cards to cardholders; and (4) acquirers, the financial institutions that contract with merchants to acquire

the payment-card transactions. Cardholders pay issuers for their payment card transactions. Acquirers pay merchants for the cardholder purchases in exchange for a fee. From December 23, 1999, until April 2, 2013, MasterCard granted ICC a Membership in MasterCard's payment network and related brand licenses that allowed ICC to act as both an issuer and acquirer. In exchange, ICC paid MasterCard an annual licensing fee and other fees.

In its capacity as an acquirer, ICC's standard agreement with merchants provides that ICC "shall pay [merchants] the total value of the valid sales receipts submitted for collection, when produced, after deducting and paying the agreed upon commission of ( )% and shall do so within ( ) business days of the date of receipt." In almost all instances, ICC's merchant agreements state that the payment term is "within five business days of the date of receipt."

In 2010, ICC provided MasterCard with collateral in the form of a letter of credit for \$1.72 million. In February 2012, MasterCard required ICC to provide additional collateral of approximately \$2.78 million. According to MasterCard's February 2012 notification to ICC, the additional collateral was needed to cover "ICC's estimated MasterCard settlement exposure" of \$4.5 million. Settlement is the process by which an issuer pays funds to acquirers, or by which an acquirer, like ICC, pays funds to merchants.

ICC posted the additional collateral in the form of a Standby Letter of Credit in the amount of \$2.78 million (the "Letter of Credit"). The Letter of Credit permits MasterCard to "demand payment" for any amount that "represent[s] funds either (i) paid by . . . MasterCard . . . to MasterCard . . . Merchants, or (ii) due and payable to MasterCard . . . Merchants." It states that "partial drawings are permitted."

On March 28, 2013, MasterCard employees exchanged emails regarding drawing down on the Letter of Credit on April 1, 2013, "in advance of officially terminating [ICC's] licenses[.]"

MasterCard employee Dharma Bajpai wrote that MasterCard has “evidence of [ICC’s] non[-]payment to merchants, currently and in the past.” Another MasterCard employee, Ian Webb, replied, “We have until the middle of the month to draw on the [Letter of Credit]. We could wait until after the termination notice and decide after seeing post-termination behavior. Grounds for drawing may be more robust then.” Bajpai responded in part:

There may be claims against [M]aster[C]ard and[/or] we may decide to make some or all merchants whole. Having cash on hand and potentially returning it if not used is a better course of action I feel . . . . We do not know the extent of merchant non[-]payment. Onl[y] when we have drawn will we have leverage for [I]CC to open up its books and conduct some form of audit. Again if we want to.

On April 1, 2013, MasterCard drew down on the Letter of Credit in the full amount of \$2.78 million. MasterCard’s drawing statement, signed by Webb, states that the \$2.78 million “represent[s] funds either (i) paid by . . . MasterCard . . . to MasterCard . . . Merchants, or (ii) [d]ue and payable to MasterCard . . . Merchants.” MasterCard did not pay, either before or after the drawdown, any funds owed by ICC to any merchants, nor did MasterCard return any of the funds to ICC until more than four years later, after the jury verdict. MasterCard did not draw down on the \$1.72 million letter of credit, which also provides that MasterCard could draw down for funds paid by MasterCard to merchants or due and payable to merchants.

On April 2, 2013, MasterCard sent a letter to ICC terminating ICC’s Membership in MasterCard’s network and related licenses effective as of that date. The letter provides that “[d]espite MasterCard’s notice, ICC has continued to delay payments to [m]erchants for transactions ICC acquired from those [m]erchants.”

## **B. Procedural History**

On April 18, 2013, ICC sued MasterCard asserting six causes of action. Count Three, the only surviving claim at the time of trial, alleges conversion under New York law based on the

\$2.78 million drawdown on the Letter of Credit. MasterCard asserted three counterclaims -- two claims for breach of contract and one claim for a declaratory judgment that MasterCard had a right to draw down on the Letter of Credit.

On April 3, 2017, a six-day jury trial commenced on ICC's conversion claim and MasterCard's contract counterclaims. The parties agreed before trial that judgment should be entered on MasterCard's declaratory judgment counterclaim in a manner consistent with the jury's finding on ICC's conversion claim. The jury found for ICC on the conversion claim and awarded ICC \$2.78 million, in effect reversing MasterCard's drawdown on the letter of credit. The jury found for MasterCard on one of the two contract claims, concluding that ICC had breached its contract with MasterCard "by failing to pay merchants on a timely basis or by failing to provide information MasterCard requested." The jury awarded no damages to MasterCard. On April 24, 2017, MasterCard returned \$2.78 million to ICC.

## II. STANDARD

Judgment as a matter of law is appropriate "only if the court, viewing the evidence in the light most favorable to the non-movant, concludes that a reasonable juror would have been *compelled* to accept the view of the moving party." *MacDermid Printing Sols. LLC v. Cortron Corp.*, 833 F.3d 172, 180 (2d Cir. 2016) (internal quotation marks omitted). "The court cannot assess the weight of conflicting evidence, pass on the credibility of witnesses, or substitute its judgment for that of the jury." *Wiercinski v. Mangia 57, Inc.*, 787 F.3d 106, 113 (2d Cir. 2015) (internal quotation marks omitted). A Rule 50 motion may be granted only if "there exists such a complete absence of evidence supporting the verdict that the jury's findings could only have been the result of sheer surmise and conjecture, or the evidence in favor of the movant is so overwhelming that reasonable and fair minded [persons] could not arrive at a verdict against

[it].” *Warren v. Pataki*, 823 F.3d 125, 139 (2d Cir. 2016) (internal quotation marks omitted), *cert. denied sub nom. Brooks v. Pataki*, 137 S. Ct. 380 (2016).

### III. DISCUSSION

MasterCard argues that no reasonable jury could have found in favor of ICC on the conversion claim. This argument is rejected.

“A conversion 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. N.Y. Organ Donor Network, Inc.*, 860 N.E.2d 713, 717 (N.Y. 2006). In certain circumstances, a defendant commits conversion if she obtains possession by making a knowingly false statement. *See, e.g., Hyosung Am., Inc. v. Sumagh Textile Co.*, 25 F. Supp. 2d 376, 384 (S.D.N.Y. 1998) (applying New York law; “letter of credit applicant may state a claim for conversion against party drawing down letter of credit using fraudulent documents . . . .” (citing *Emery-Waterhouse Co. v. R.I. Hosp. Tr. Nat’l Bank*, 757 F.2d 399, 406 (1st Cir. 1985) (Breyer, J.)), *aff’d*, 189 F.3d 461 (2d Cir. 1999); *City of Amsterdam v. Daniel Goldreyer, Ltd.*, 882 F. Supp. 1273, 1280 (E.D.N.Y. 1995) (applying New York law; “the commission of fraud may also be sufficient interference to support a claim of conversion”); *Merrill Lynch, Pierce, Fenner & Smith Inc. v. Arcturus Builders Inc.*, 552 N.Y.S.2d 287, 288 (1st Dep’t 1990) (conversion claim based on the defendants’ withdrawing funds from a bank to which the defendants were not entitled); 23 N.Y. Jur. 2d Conversion, Etc. § 22 (2d ed., May 2017 update) (“A defendant who obtains possession of property under a false representation and who retains the property is liable for conversion conducted with a clear intent designed to victimize the owner.”); *see generally Connaughton v. Chipotle Mexican Grill, Inc.*, 29 N.Y.3d 137, 142 (N.Y. 2017) (“To allege a cause of action based on fraud, plaintiff must assert a

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