IN THE SUPERIOR COURT OF THE STATE OF DELAWARE
IN AND FOR NEW CASTLE COUNTY

1 OAK PRIVATE EQUITY VENTURE CAPITAL LIMITED, a Cayman Islands exempt limited company for itself and as manager for and on behalf of BLUEBIRD ACCESS 1 LP, a Cayman Islands exempt limited partnership, in their own rights and as successors-in-interest to 1 Oak Group Limited, a Cayman Islands exempt limited company, 1 Oak Financial Group Limited, a Cayman Islands exempt limited company, and 1OAK New Digital Age (NDA) TOP Fund, a segregated portfolio of JP SPC5, a Cayman Islands segregated portfolio company, Plaintiffs, v. TWITTER, INC., a Delaware corporation, Defendant.	)	C.A. No. N14C-10-186 EMD CCLD

Submitted: August 14, 2015
Decided: November 20, 2015

Upon Consideration of Defendant Twitter Inc.'s Motion to Dismiss the Amended Complaint for Forum Non Conveniens or, Alternatively, Motion to Dismiss the Amended Complaint Pursuant to Rule 12(b)(6)
DENIED

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DAVIS, J.

INTRODUCTION

This is a civil action assigned to the Complex Commercial Litigation Division of the Court. This case arises out of two separate contracts between Plaintiffs 1OAK Private Equity Venture Capital Limited, Bluebird Access 1 LP and 1OAK New Digital Age (NDA) TOP Fund, a segregated portfolio of JP SPC5 (collectively, "Plaintiffs" or "1OAK"), and Twitter, Inc. ("Twitter"). Plaintiffs are a wealth management firm and a group of related funds. Twitter is a social networking service. 1OAK and Twitter purportedly entered into negotiations in which 1OAK would assemble a group of sophisticated investors who would invest a minimum of $100 million to purchase a pre-initial public offering ("IPO") of Twitter shares from Twitter employees or Series A and/or Series B early stage investors.

On January 20, 2012, 1OAK and Twitter entered into a Mutual Non-Disclosure Agreement ("MNDA") for the purpose of evaluating a potential business transaction between the parties. Subsequently, in April 2012, 1OAK and Twitter allegedly entered into an Approved Buyer Agreement ("ABA") for the purpose of designating 1OAK as approved buyers in procuring investors for a potential pre-IPO stock purchase.

On December 19, 2014, 1OAK filed the Amended Complaint against Twitter for: (1) breach of contract; (2) breach of the implied covenant of good faith and fair dealing; (3) promissory estoppel; (4) interference with prospective business advantage; (5) quasi-contract/quantum meruit; and (6) unjust enrichment.

On January 29, 2015, Twitter filed the Defendant Twitter, Inc.'s Motion to Dismiss (the "Motion to Dismiss"). Through the Motion to Dismiss, Twitter seeks dismissal of all claims alleged in the Amended Complaint for failure to state a claim upon which relief can be granted,

or alternatively, for *forum non conveniens*. On March 2, 2015, 1OAK filed their Plaintiffs' Answering Brief in Opposition to Defendant Twitter, Inc.'s Motion to Dismiss (the "Answering Brief"). On March 24, 2015, Twitter filed the Reply Brief in Further Support of Defendant Twitter, Inc.'s Motion to Dismiss (the "Reply Brief"). On July 29, 2015, the Court held a hearing, with all parties present, on the Motion to Dismiss, the Answering Brief and the Reply Brief. The Court took the matter under advisement at the end of the hearing.

Subsequently, on August 10, 2015, Plaintiffs' counsel submitted a letter (the "August 10 Letter") to the Court, advising the Court of a recent decision in California that may have some applicability to the issues raised by the parties in their briefing on the Motion to Dismiss. Twitter's counsel responded to the August 10 Letter on August 14, 2015.

This is the Court's decision on the Motion to Dismiss. For the reasons set forth below, the Court will **DENY** the Motion to Dismiss.

FACTUAL BACKGROUND

Plaintiffs are all Cayman Islands entities with offices in London.[1] Twitter is a Delaware corporation with its principal place of business in San Francisco, California.[2] Twitter's registered agent is located in Dover, Delaware.[3]

On January 20, 2012, Twitter and 1OAK entered into a Mutual Non-Disclosure Agreement ("MNDA").[4] The MNDA was a vehicle for the parties to exchange confidential business information for use in "evaluating a potential business transaction between the

[1] Am. Compl. ¶ 1 (Dec. 19, 2014) (Trans. ID. 56500608).
[2] *Id.* ¶ 2.
[3] *Id*.
[4] *Id.* ¶ 7. *See also* Aff. of Wendy Riggs, Ex. A MNDA (Trans. ID. 56687615).

parties."[5] The MNDA contains a choice of law clause that designates California law as law to be applied to disputes involving that agreement.[6]

Between February and October 2012, 1OAK carried out extensive due diligence on Twitter, its management, its past and forward-looking financial statements and business metrics, and its business model and strategy.[7] The parties also held meetings at Twitter's San Francisco premises between both companies' top executives.[8] In April 2012, Twitter advised 1OAK that it was satisfied with 1OAK's qualifications as a potential buyer of Twitter shares.[9]

On April 7, 2012, Twitter drafted and forwarded to 1OAK an Approved Buyer Agreement ("ABA").[10] The ABA stated that Twitter would designate 1OAK as an "Approved Eligible Purchaser" in which 1OAK would be eligible to purchase Twitter secondary market shares.[11] 1OAK signed and returned the ABA to Twitter on April 8.[12] 1OAK alleges that Twitter encouraged 1OAK to begin to raise the minimum $100 million as promptly as possible, assuring 1OAK that a fully-executed ABA would be forthcoming.[13] Twitter claimed the ABA was on the desk of busy Twitter managers, waiting to be signed.[14] The ABA contains a choice of law clause that designates that the agreement is to be governed, construed and interpreted in accordance with the laws of Delaware.[15] Moreover, the ABA provides that, in the event of litigation, the parties agree to bring any action on the ABA in the Delaware Court of Chancery or

[5] MNDA ¶ 2.
[6] *Id.* ¶ 8.
[7] Am. Compl. ¶ 8.
[8] *Id.*
[9] *Id.*
[10] *Id.*
[11] *Id.*
[12] *Id.*
[13] Am. Compl. ¶ 8.
[14] *Id.*
[15] Pls.' Ans. Br. at 4 (citing Decl. of Mario Bonaccorso, Ex. A ABA § 8(e) (Trans. ID. 57079952)). The Mario Bonaccorso Declaration, including the ABA, was filed under seal. As such, at this time, the Court will only make general references to the terms of the ABA and not provide full passages of the document.

other courts of Delaware, and that no party shall file a motion to deny jurisdiction in the Delaware Court of Chancery or other Delaware court.[16]

On April 27, 2012, Twitter forwarded to 1OAK a letter confirming that an approved buyer relationship was effective and ending with the statement: "We look forward to having the [1OAK] NDA Fund as a shareholder in Twitter, Inc."[17] At Twitter's request, and allegedly under the protection of the MNDA, 1OAK disclosed to Twitter several of 1OAK's potential investors and facilitated contacts between Twitter and these investors.[18]

On October 12, 2012, Nils Erdmann, Twitter's Investor Relations Director, wrote to Emmanuel Lumineau, a 1OAK manager, an e-mail in which Mr. Erdmann stated, "if these managers [from whom 1OAK was seeking to raise funds to acquire Twitter shares] need affirmation of your status as an approved buyer, I'm also willing to convey that."[19] Mr. Erdmann confirmed 1OAK was the only sizeable right of first refusal fund approved by Twitter during several conference calls in October 2012 -- calls organized by 1OAK with numerous of its prospective institutional and high net worth investors.[20]

On or about October 2012, 1OAK procured BlackRock, Inc. as an investor in the fund.[21] On October 17, 2012, BlackRock entered into a non-disclosure agreement with 1OAK and carried out due diligence on 1OAK.[22] 1OAK delivered to BlackRock its proprietary research on Twitter and offered BlackRock a governance tie-up option, at all times keeping Twitter, through Mr. Erdmann, informed about the development of the 1OAK–BlackRock relationship.[23]

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[16] *Id.*
[17] Am. Compl. ¶ 9.
[18] *Id.* ¶ 9.
[19] *Id.* ¶ 10.
[20] *Id.*
[21] *Id.* ¶ 11.
[22] *Id.*
[23] Am. Compl. ¶ 11.

On October 22, 2011, in a conference call among 1OAK, BlackRock, and Twitter, Mr. Erdmann described Twitter's anticipated involvement in the secondary market in detail and noted that numerous legal safeguards had been put in place to assure that Twitter shares only went to shareholders with whom Twitter was comfortable.[24] Mr. Erdmann stated that Twitter could control all share transfers and confirmed that 1OAK was one of a small number of funds that would have access to Twitter pre-IPO shares.[25]

After the conference call, Twitter terminated 1OAK's "approved buyer" status, which allegedly caused BlackRock to cease working with 1OAK.[26] Twitter began to work with BlackRock directly.[27]

In January 2013, Twitter and BlackRock announced an $80 million pre-IPO share purchase transaction (the "Transaction") with Twitter shareholders.[28] 1OAK contends that the Transaction was the type of investment that Twitter allegedly agreed 1OAK would develop.[29]

On February 4, 2013, 1OAK sent Twitter and BlackRock a demand that 1OAK be permitted to participate financially in the Transaction.[30] However, Twitter rejected 1OAK's demand.[31]

THE CONTENTIONS OF THE PARTIES

Twitter first contends that 1OAK's breach of the MNDA claim should be dismissed because "BlackRock's interest" does not fall under the scope of the defined term "Confidential Information" in the MNDA. Twitter further argues that 1OAK's breach of the ABA claim should be dismissed because Twitter did not sign the ABA and there was no mutual assent;

[24] *Id.* ¶ 12.
[25] *Id.*
[26] *Id.* ¶ 13.
[27] *Id.*
[28] *Id.* ¶ 14.
[29] *Id.*
[30] Am. Compl. ¶ 15.
[31] *Id.*

therefore, no valid contract existed. Twitter asserts, even if it entered into the ABA, 1OAK fails to allege a breach of the ABA. In response, 1OAK contends that Twitter breached the MNDA because 1OAK's disclosure of "BlackRock's interest" to Twitter was made confidentially under the terms of the MNDA. 1OAK further argues that Twitter voluntarily entered into the ABA based on the parties' conduct notwithstanding Twitter's failure to sign the ABA. 1OAK asserts Twitter breached the ABA by procuring BlackRock for the kind of fund participation that the ABA contemplated.

Second, Twitter argues that, because it did not mutually assent to the ABA, the forum selection clause choosing Delaware as the exclusive forum for litigation is inapplicable. Instead, Twitter contends the action should be filed in California. 1OAK responds that pursuant to the clear terms of the ABA, it was required to file this action in Delaware.

Third, Twitter asserts that even if the ABA contains a valid forum selection clause, the Amended Complaint should be dismissed for *forum non conveniens*. Twitter contends that California is a more convenient forum because the negotiations preceding the MNDA and the ABA occurred in California at Twitter's headquarters in San Francisco; all or most of the documents and expected witnesses are located in California or the United Kingdom ("U.K."); and California law applies to the Amended Complaint. 1OAK counters that Delaware is the appropriate forum because Twitter cannot prove it will suffer overwhelming hardship by litigating the claim in Delaware; Twitter is a Delaware corporation; by agreeing to the ABA with its forum selection clause, Twitter voluntarily chose to litigate the claims in Delaware; nearly all of the documents involved will be electronic; third-party witnesses from BlackRock will be coming from New York, which is closer to Delaware than California; and Delaware law governs the ABA.

Lastly, Twitter asserts various contentions that the additional claims alleged in the Amended Complaint should be dismissed for failure to state a claim for which relief can be granted. 1OAK opposes all of Twitter's contentions.

STANDARD OF REVIEW

Upon a motion to dismiss, the Court (i) accepts all well-pleaded factual allegations as true, (ii) accepts even vague allegations as well pleaded if they give the opposing party notice of the claim, (iii) draws all reasonable inferences in favor of the non-moving party, and (iv) will only dismiss a case where the plaintiff would not be entitled to recover under any reasonably conceivable set of circumstances.[32] However, the court must "ignore conclusory allegations that lack specific supporting factual allegations."[33]

In considering a motion to dismiss under Rule 12(b)(6), the court generally may not consider matters outside the complaint.[34] However, documents that are integral to or incorporated by reference in the complaint may be considered.[35] "If . . . matters outside the pleading are presented to and not excluded by the Court, the motion shall be treated as one for summary judgment and disposed of as provided in Rule 56, and all parties shall be given reasonable opportunity to present all material made pertinent to such a motion by Rule 56."[36]

"Where an agreement plays a significant role in the litigation and is integral to a plaintiff's claims, it may be incorporated by reference without converting the motion to a summary judgment."[37] Here, the MNDA and the ABA are integral to 1OAK's claims and are

[32] *Cent. Mortg. Co. v. Morgan Stanley Mortg. Capital Holdings LLC*, 27 A.3d 531, 536 (Del. 2011); *Doe v. Cedars Acad.*, 2010 WL 5825343, at *3 (Del. Super. Oct. 27, 2010).
[33] *Ramunno v. Cawley*, 705 A.2d 1029, 1034 (Del. 1998).
[34] Super. Ct. Civ. R. 12(b).
[35] *In re Santa Fe Pac. Corp. S'holder Litig.*, 669 A.2d 59, 70 (Del. 1995).
[36] Super. Ct. Civ. R. 12(b).
[37] *Furnari v. Wallpang, Inc.*, 2014 WL 1678419, at *4 (Del. Super. Apr. 16, 2014).

incorporated by reference in the Amended Complaint. Therefore, the Court can consider the ABA and the MNDA in deciding Twitter's Motion to Dismiss.

DISCUSSION

A. BREACH OF CONTRACT CLAIM

To survive a motion to dismiss for breach of contract, a plaintiff must show: (1) a contractual obligation; (2) breach of that obligation; and (3) damages caused by the defendant's breach.[38] A complaint for breach of contract is sufficient if it contains "a short and plain statement of the claim showing that the pleader is entitled to relief."[39]

1OAK alleges a breach of contract claim under both the MNDA and the ABA.[40]

1. MNDA

Twitter contends that 1OAK does not adequately allege a breach of the MNDA. Essentially, 1OAK alleges that its disclosure of "BlackRock's interest" to Twitter was made confidentially pursuant to the MNDA, and when Twitter wrongfully excluded 1OAK from the Transaction between Twitter and BlackRock, Twitter breached the MNDA.[41] 1OAK alleges that the terms of the MNDA "precluded Twitter from using confidential customer information except for a potential business transaction involving 1OAK."[42] 1OAK asserts that Twitter breached the MNDA "by using confidential information provided by 1OAK for purposes other than a transaction with 1OAK."[43]

Twitter responds that the term "BlackRock's interest" does not fall under the scope of the defined term "Confidential Information" in the MNDA. Under Paragraph 1 of the MNDA,

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[38] *See, e.g., Quereguan v. New Castle Cnty.*, 2006 WL 1215193, at *4 (Del. Ch. Apr. 24, 2006).
[39] Super. Ct. Civ. R. 8(a). *See also VLIW Tech., LLC v. Hewlett-Packard Co.*, 840 A.2d 606, 611 (Del. 2003).
[40] Am. Compl. ¶¶ 16–20.
[41] *Id.* ¶ 14.
[42] *Id.*
[43] *Id.* ¶ 19.

"Confidential Information" means "proprietary information that is exchanged between the parties." Under Paragraph 3, "Confidential Information" excludes information that: "(b) was already in Recipient's possession without restriction before receipt from the Disclosing Party and was not subject to a duty of confidentiality; (c) is rightfully disclosed to Recipient by a third party without confidentiality restrictions; or (d) that Recipient independently developed without use of or reference to Confidential Information."

To support its argument, Twitter submitted an Affidavit from Wendy Riggs, an eDiscovery Manager and Senior Paralegal at Twitter, stating that BlackRock's interest was introduced to them by a different potential purchaser fund. However, the Affidavit is outside of the pleadings and is not integral to or incorporated by reference in the Amended Complaint. The Court, therefore, will not consider it at this stage of the proceedings on a Civil Rule 12(b)(6) motion to dismiss. Accordingly, the Court finds that 1OAK has alleged sufficient, reasonably conceivable facts to show that Twitter breached the MNDA by using confidential information, *i.e.*, "BlackRock's interest" outside the MNDA.

2. ABA

Twitter first argues that it did not assent to the ABA. To form a contract in Delaware, an offer must be made by one person or entity to another in which the offeree accepts.[44] "An offer means the signification by one person to another of his willingness to enter into a contract with him on the terms specified in the offer."[45] As stated by the Delaware Supreme Court, "the overt manifestation of assent—not subjective intent—controls the formation of a contract; that the only

[44] *Loveman v. Nusmile, Inc.*, 2013 WL 847655, at *3 (Del. Super. Mar. 31, 2009).
[45] *Id.*

intent of the parties to a contract which is essential is an intent to say the words or do the acts which constitute their manifestation of assent."[46]

Twitter's main contention is that because it did not sign the ABA, it did not manifest assent to the ABA, and therefore, no valid contract existed. In determining whether a contract was formed, Delaware courts look to the parties' words and acts to discern the parties' intent to form a contract.[47] Twitter cites generally to various California cases, which state that when "a writing is viewed as the consummation of the negotiations[,] there is no contract until the written draft is finally signed."[48] However, Delaware and other courts have stated that "[n]othing in the law of contracts requires that a contract, whether original or modified, must be signed to be enforceable . . . provided there [is] other evidence of acceptance . . . ."[49]

The Court has encountered a situation similar to the instant dispute and concluded that a contract was formed. In *Loveman v. Nusmile*, after oral negotiations between the parties, the defendants faxed a copy of the written agreement to the plaintiff.[50] The plaintiff signed the agreement and returned the contract via fax the next day.[51] The written agreement contained a forum selection clause.[52] The defendants received the signed contract with the plaintiff's signature, but they never signed the contract.[53] Nevertheless, the Court found that based on the parties' objective intent, a contract was formed, which included the forum selection clause.[54]

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[46] *Id.* (internal quotations omitted).
[47] *Id.*
[48] *Store Props., Inc. v. Neal*, 72 Cal. App. 2d 112, 116–17 (1945).
[49] *Whittingham v. Dragon Grp. L.L.C.*, 2013 WL 1821615, at *3 (Del. Ch. May 1, 2013). The Court notes that the instant dispute does not fall under the statute of frauds writing requirement because a sale of stock is explicitly excluded from the definition of "goods" under Article 2 of the Uniform Commercial Code. 6 *Del. C.* § 2-105. *See also Lineberger v. Welsh*, 290 A.2d 847, 849 (Del. Ch. 1972) (explaining a contract for sale of stock is expressly excluded under the UCC as an "investment security"). Therefore, a signed writing by the party to be charged is not required.
[50] *Loveman*, 2013 WL 847655, at *3–4.
[51] *Id.*
[52] *Id.*
[53] *Id.*
[54] *Id.*

Based on the allegations in the Amended Complaint, it is reasonably conceivable that Twitter objectively manifested assent to the ABA. On January 20, 2012, Twitter and 1OAK entered into the MNDA.[55] Between January and April 2012, Twitter allowed 1OAK to carry out extensive due diligence on Twitter's financials in furtherance of a potential purchase of pre-IPO shares including various face-to-face meetings in San Francisco.[56] Based on these negotiations, Twitter drafted a proposed ABA, used its letterhead, and sent the proposal to 1OAK.[57] It is reasonably conceivable that based on the circumstances, 1OAK believed this proposal to be an offer capable of acceptance by signing the ABA. 1OAK signed the ABA without changing any terms and sent it back to Twitter the next day.[58] Twitter received the signed ABA.[59] While Twitter never signed the ABA, it did not object to its existence after receipt.[60] Instead, Twitter informed 1OAK that the ABA was on the desk of busy Twitter managers waiting to be signed.[61]

1OAK alleges additional evidence that Twitter assented to the ABA based on its conduct after receiving the signed ABA. For example, Twitter encouraged 1OAK to begin raising funds assuring 1OAK that a fully-executed ABA would be forthcoming.[62] Five months later, after 1OAK continued to procure investors, Twitter offered to confirm 1OAK's status, as specified in the ABA, to third parties in an email from Twitter to 1OAK.[63] Therefore, similar to *Loveman*, 1OAK has plead sufficient facts showing that Twitter objectively manifested assent to the ABA.

Next, Twitter asserts that even if a written contract existed, 1OAK fails to allege a breach of the ABA. The ABA stated that Twitter would designate 1OAK as an "Approved Eligible

[55] Am. Compl. ¶ 7. *See also* MNDA.
[56] Am. Compl. ¶ 8.
[57] *Id.*
[58] *Id.*
[59] *Id.*
[60] *Id.*
[61] *Id.*
[62] Am. Compl. ¶ 8.
[63] *Id.* ¶ 10 ("[I]f these managers [from whom 1OAK was seeking to raise funds to acquire Twitter shares] need affirmation of your status as an approved buyer, I'm also willing to convey that.").

Purchaser," which meant that 1OAK would be eligible to purchase Twitter secondary market shares.[64] According to its terms, 1OAK would procure investors for the pre-IPO purchase totaling a minimum of $100 million.[65] Based on the allegations in the Amended Complaint, it is reasonably conceivable that Twitter breached the ABA by procuring BlackRock for the kind of fund participation that the ABA contemplated after 1OAK introduced BlackRock to Twitter as part of the fund.[66]

Under the facts as plead, the Court finds that 1OAK has alleged sufficient, reasonably conceivable facts to show that 1OAK and Twitter entered into an agreement – the ABA and that Twitter breached the ABA.

B. FORUM SELECTION CLAUSE

Twitter contends that even if 1OAK has sufficiently plead breach of contract claims for the MNDA and the ABA, California provides an adequate alternative forum that is more convenient to the parties involved. "Delaware courts generally give effect to the terms of private agreements to resolve disputes in a designated judicial forum out of respect for the parties' contractual designation."[67] "Deference is not afforded where either of the following exceptions exists: '(1) if enforcement would be unreasonable and unjust under the circumstances; or (2) if the forum selection clause was procured by fraudulent inducement.'"[68] "An agreement is only unreasonable when its enforcement would seriously impair Plaintiff's ability to pursue its cause of action. Mere inconvenience or additional expense is not the test of unreasonableness."[69]

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[64] *Id.*
[65] *Id.* ¶ 8.
[66] *Id.* ¶ 13.
[67] *Prestancia Mgmt. Grp., Inc. v. Virginia Heritage Found., II LLC*, 2005 WL 1364616, at *7 (Del. Ch. May 27, 2005) (internal quotations omitted).
[68] *Loveman*, 2013 WL 847655, at *3 (quoting *Prestancia*, 2005 WL 1364616, at *7 n.56) (internal citation omitted).
[69] *Loveman*, 2013 WL 847655, at *3 (quoting *Halpern Eye Assocs., P.A. v. E.A. Crowell & Assocs., Inc.*, 2007 WL 3231617, at *4 (Del. Ch. Sept. 18, 2007)).

"If a forum selection clause validly limits a plaintiff to a single forum, that clause operates to divest a court that otherwise has jurisdiction of its status as a proper venue for the plaintiff to sue."[70] To determine whether a forum selection clause is permissive or mandatory, the "parties must use express language clearly indicating the forum selection clause excludes all other courts before which those parties could otherwise properly bring an action . . . . [A]bsent clear language, a court will not interpret a forum selection clause to indicate the parties intended to make jurisdiction exclusive."[71]

1OAK was required to file this action in Delaware according to the clear, unambiguous language of the ABA. The ABA contains a mandatory forum selection clause stating that the ABA and "any transactions contemplated by [the ABA]" must be brought in Delaware's courts, and "not . . . in any court other than the Court of Chancery or other courts of the State of Delaware . . . ."[72] The ABA's explicit inclusion of the word "any" necessarily requires 1OAK to bring any actions related to a breach of the MNDA in a Delaware court.[73]

Twitter is not unreasonably impaired by litigating this action in Delaware. In *Loveman*, the Court held that the challenging party was not unreasonably impaired by being required to file the action in Florida pursuant to a forum selection clause when: the defendant was incorporated in Florida; the plaintiff contractually agreed to litigate claims pursuant to the forum selection clause; and the plaintiff was not asserting it was fraudulently induced to sign the contract.[74] Similarly, here, Twitter is incorporated in Delaware; it is reasonably conceivable that Twitter

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[70] *Id.*
[71] *Prestancia*, 2005 WL 1364616, at *7 (quoting *Eisenbud v. Omnitech*, 1996 WL 162245, at *1 (Del. Ch. Mar. 21, 1996)).
[72] As previously stated, the Court will not quote in full provisions of the ABA as the ABA was filed under seal. For purposes of the record, the Court is relying on section 8(e) of the ABA.
[73] In *Prestancia Management Group, Inc. v. Virginia Heritage Foundation, II LLC*, the Delaware Court of Chancery held that "[t]he forum selection clause in the Security Agreement [was] mandatory, as it expressly require[d] any dispute under the Security Agreement to be litigated in Loudoun County, Virginia" based on the Security Agreement's explicit inclusion of the word "any." 2005 WL 1364616, at *7.
[74] 2013 WL 847655, at *3.

voluntarily entered into the ABA; and Twitter (and/or 1OAK) is not alleging that it was fraudulently induced to enter into the ABA. The Court finds that 1OAK properly filed this civil proceeding in Delaware and that Twitter is not unreasonably impaired by litigating the action (i) because the ABA contained a mandatory forum selection clause choosing Delaware and (ii) based on the foregoing facts and circumstances as plead in the Amended Complaint.

C. *FORUM NON CONVENIENS*

Twitter next argues, notwithstanding a valid forum selection clause, the Amended Complaint should be dismissed based on *forum non conveniens*. A *forum non conveniens* motion is within the trial court's sound discretion.[75] "Delaware trial judges must decide whether the defendants have shown that the *forum non conveniens* factors weigh so overwhelmingly in their favor that dismissal of the Delaware litigation is required to avoid undue hardship and inconvenience to them."[76] "Overwhelming hardship" is "intended as a stringent standard that holds defendants who seek to deprive a plaintiff of her chosen forum to an appropriately high burden."[77]

When there is no issue of prior pendency of the same action in another jurisdiction, such as here, a defendant must prove the following "*Cryo-Maid* factors" in support of its motion to dismiss for *forum non conveniens*:

> (1) the relative ease of access to proof;
> (2) the availability of compulsory process for witnesses;
> (3) the possibility of the view of the premises;
> (4) whether the controversy is dependent upon the application of Delaware law which the courts of this State more properly should decide than those of another jurisdiction;
> (5) the pendency or nonpendency of a similar action or actions in another jurisdiction; and

[75] *Martinez v. E.I. du Pont de Nemours & Co.*, 86 A.3d 1102, 1104 (Del. 2014).
[76] *Id.* at 1106.
[77] *Id.* at 1105.

> (6) all other practical problems that would make the trial of the case easy, expeditious and inexpensive.[78]

"The analysis is not one in which the Court should come to a conclusion based on a tally of which, or how many, factors favor the defendant; rather, the Court must consider the weight of those factors in the particular case and determine whether any or all of them truly cause both inconvenience and hardship."[79] Strong deference is generally given to a plaintiff's choice of forum; however, when the plaintiff is not a resident of Delaware, public policy concerns regarding deference to a plaintiff are not as strong.[80]

After considering the Motion to Dismiss, the papers filed in support and in opposition to the Motion to Dismiss, and after holding a hearing on the Motion to Dismiss, the Court determines that this civil action should not be dismissed due to *forum non conveniens*. In coming to this result, the Court notes that the only "*Cryo-Maid* factors" at issue here are: (1) relative ease of access to proof; (2) availability of compulsory process for witnesses; (4) governing law; and (6) other practical considerations.

1. Factor (1) Relative Ease of Access to Proof

The Delaware Court of Chancery has stated that this factor has become largely insignificant for corporate and commercial disputes—especially for large, sophisticated entities, such as both parties here.[81] Moreover, "[m]odern methods of transportation lessen the Court's concern about the travel of witnesses who do not live in Delaware."[82] The negotiations preceding the MNDA and the ABA occurred in California at Twitter's headquarters and in the

[78] *Id.* at 1104.
[79] *VTB Bank v. Navitron Projects Corp.*, 2014 WL 1691250, at *8 (Del. Super. Apr. 28, 2014).
[80] *Id.*
[81] *Hamilton Partners, L.P. v. Englard*, 11 A.3d 1180, 1213–14 (Del. Ch. 2010).
[82] *LeCroy Corp. v. Hallberg*, 2009 WL 3233149, at *8 (Del. Ch. Oct. 7, 2009).

U.K. at 1OAK's headquarters.[83] Thus, all or most of the documents and witnesses are located in California or the U.K, and not Delaware. However, because all or nearly all of the documents to be produced will be electronic, and based on the sophistication and available resources to Twitter and 1OAK, Twitter has not established that it will suffer overwhelming hardship by litigating the action in Delaware as opposed to California with regard to accessing electronic, or physical, documents or witnesses.

2. Factor (2) Availability of Compulsory Process for Witnesses

To prevail on this compulsory process factor, Twitter must identify the inconvenienced witnesses and the specific substance of their testimony.[84] Delaware has compulsory power to issue subpoenas to directors, officers, and managing agents of a Delaware corporation.[85] Nevertheless, also relevant to this factor, "[m]odern methods of transportation lessen the Court's concern about the travel of witnesses who do not live in Delaware."[86]

Twitter contends that some of the witnesses identified are not subject to Delaware's compulsory process. For example, 1OAK's likely key witness, Mr. Erdmann, former Director of Investor Relations at Twitter, would not be subject to compulsory process in Delaware because he is no longer employed with Twitter. Critically, Twitter does not argue that he would refuse to testify.[87] Other than Mr. Erdmann, Twitter does not identify other specific witnesses that would not be subject to Delaware's compulsory process. The Court does not measure this factor based

[83] Am. Compl. ¶ 8.
[84] *LeCroy*, 2009 WL 3233149, at *8.
[85] *Hamilton Partners*, 11 A.3d at 1214–15.
[86] *LeCroy*, 2009 WL 3233149, at *8.
[87] *See Aveta, Inc. v. Colon*, 942 A.2d 603, 613 (Del. Ch. 2008) (stating that overwhelming hardship for this element is not met when the defendant does not show that his witness would refuse to appear in Delaware voluntarily).

on the location of Twitter's employees because it is presumed that they would be paid, are in Twitter's control, and would appear to testify in Delaware.[88]

Additionally, there are third-party witnesses expected from BlackRock that will be involved in the litigation from New York. Thus, Delaware would be a more convenient forum for BlackRock than California. While there do not appear to be any witnesses in Delaware, Twitter will not suffer overwhelming hardship to litigate in Delaware.

3. Factor (4) Governing Law Analysis

Twitter argues that California law applies to the parties' entire dispute. To determine which law governs, the choice of law principles of the forum state applies—*i.e.*, Delaware's choice of law principles govern whether to apply Delaware or California law.[89] When the parties specify a choice of law in the contract, the chosen law governs "unless the chosen state lacks a substantial relationship to the parties or transaction or apply the law of the chosen state will offend a fundamental policy of a state with a material greater interest."[90] Title 6, section 2708(a) of the Delaware Code recognizes that a choice of law clause is a "significant, material and reasonable relationship with this State and shall be enforced whether or not there are other relationships with this State."

"The fact that a Delaware court must apply another state's law . . . does not in and of itself create overwhelming hardship. In fact, it is not unusual 'for Delaware courts to deal with open questions of the law of sister states . . . .'"[91] However, the Delaware Supreme Court has

[88] *LeCroy*, 2009 WL 3233149, at *8 ("Furthermore, to the extent that most of the witnesses [the defendant] alluded to are [the defendant's] employees, 'it must be presumed that they would be paid by [the defendant] and consequently, are under [the defendant's] control and would appear in . . . Delaware . . . at [the defendant's] request. To the extent that these persons are fact witnesses, their testimony could be obtained by deposition.'" (quoting *HFTP Invs., LLC v. ARIAD Pharm., Inc.*, 752 A.2d 115, 123 (Del. Ch. 1999)).
[89] *Vichi v. Koninklijke Philips Elecs., N.V.*, 85 A.3d 725, 765–66 (Del. Ch. 2014).
[90] *SIGA Techs., Inc. v. PharmAthene, Inc.*, 67 A.3d 330, 342 (Del. 2013) (quoting RESTATEMENT (SECOND) OF CONFLICTS § 187).
[91] *LeCroy*, 2009 WL 3233149, at *8 (quoting *Kolber v. Holyoke Shares, Inc.*, 213 A.2d 444, 446 (Del. 1965)).

emphasized that overwhelming hardship may exist if a Delaware court would be forced to resolve issues of law that another jurisdiction would consider important.[92]

The MNDA and the ABA contain conflicting choice of law provisions. The MNDA contains a clause choosing California law; the ABA contains a clause choosing Delaware law. The MNDA's choice of law clause stated: "This Agreement is governed by the laws of California, excluding its conflict-of-laws principles."[93] The MNDA did not contain a forum selection clause. The ABA's choice of law clause was more comprehensive, and simultaneously included a forum selection clause.[94]

Twitter argues that California law should apply to any of the claims in the Amended Complaint that allege a breach of the MNDA. Twitter bases its argument on the fact that the MNDA has a valid choice of law clause that designating California law as the law to be applied to disputes arising out of the MNDA. Further, Twitter contends that because the MNDA is the only contract that Twitter undisputedly entered into and signed, the entire dispute is governed by California law.

1OAK's argument is unclear. It appears 1OAK argues that Delaware law applies to any claims relating to a breach of the ABA and concedes that California law applies to any claims relating to a breach of the MNDA. In 1OAK's Answering Brief, 1OAK does not explicitly argue that Delaware law applies to any of their claims arising out of the MNDA.

The Court finds it is premature at this stage of the litigation to decide whether Delaware law or California law applies to the entire dispute, or whether the claims should be bifurcated

[92] *Martinez*, 86 A.3d at 1110–11 n.37.
[93] MNDA ¶ 8.
[94] ABA § 8(e).

between the two. Any tort claims alleged would also follow such bifurcation.[95] Even if California law applies to part of or the entire dispute, that reason alone does not mandate dismissal for *forum non conveniens*.[96] Accordingly, this factor is neutral and neither favors nor disfavors one party.

4. Factor (6) Other Practical Considerations

The final factor permits the Court to "weigh the efficient administration of justice and analogous considerations."[97] Plaintiffs are all Cayman Islands entities with offices located in London. Twitter is a Delaware corporation with its principal place of business in San Francisco, California, and its registered agent located in Dover, Delaware.

Twitter argues that the only connection to Delaware is Twitter's incorporation here. The Delaware Supreme Court has disapproved of the use of Delaware incorporation as a decisive factor in deciding a *forum non conveniens* motion.[98]

1OAK contends that Twitter regularly uses choice of law and forum selection clauses selecting Delaware in other contracts. However, 1OAK does not point to any particular contract other than the ABA to support this contention. Nor can the Court consider such contracts in deciding the motion to dismiss because the contracts, other than the MNDA and the ABA, are outside the pleadings.[99]

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[95] *See ABRY Partners V, L.P. v. F & W Acquisition LLC*, 891 A.2d 1032, 1047–48 (Del. Ch. 2006) (explaining that tort claims that arise out of the contractual relationship between the parties are logically governed by the choice of law provision in the contract).
[96] *In re Asbestos Litig.*, 929 A.2d 373, 386 (Del. Super. 2006) ("Delaware courts regularly interpret and apply the laws of other states and have consistently held that the need to apply another state's law will not be a substantial deterrent to conducting litigation in this state." (internal quotations omitted)).
[97] *Martinez*, 86 A.3d at 1113.
[98] *See, e.g.*, *Nash v. McDonald's Corp.*, 1997 WL 528036, at *3 (Del. Super. Feb. 20, 1997).
[99] Super. Ct. Civ. R. 12(b).

"No one of these *Cryo–Maid* factors is dispositive of the Court's *forum non conveniens* analysis."[100] After weighing the foregoing factors, the Court will not dismiss the action for *forum non conveniens*. Twitter's Delaware incorporation has a rational connection to the cause of action because it is reasonably conceivable that Twitter voluntarily entered into the ABA, which contained a valid Delaware choice of law clause and a mandatory forum selection clause. Moreover, the ABA specifically stated that neither party would "attempt to deny or defeat such jurisdiction by motion or other request from leave from such court."[101] Therefore, Twitter's motion to dismiss for *forum non conveniens* is denied.

D. ADDITIONAL CLAIMS

Lastly, Twitter argues that all of the additional claims alleged in the Amended Complaint should be dismissed for failure to state a claim pursuant to Civil Rule 12(b)(6). For the following reasons, the Court finds that 1OAK has plead sufficient facts to survive dismissal of the additional claims.

1. Implied Covenant of Good Faith and Fair Dealing

1OAK alleges a breach of the implied covenant under both the MNDA and the ABA.

a. MNDA

Twitter contends that 1OAK's breach of the implied covenant claim violates California law by expanding the scope of the MNDA. Twitter argues that the MNDA's scope is limited to protecting certain confidential information for the purpose of evaluating a potential transaction—not a promise that a later agreement will be consummated. California's law governing the implied covenant of good faith and fair dealing is similar to Delaware's. "Every contract imposes upon each party a duty of good faith and fair dealing in its performance and its

[100] *VTB Bank*, 2014 WL 1691250, at *12.
[101] ABA § 8(e).

enforcement."[102] "It is universally recognized that the scope of conduct prohibited by the covenant of good faith is circumscribed by the purposes and express terms of the contract."[103] The implied covenant "cannot impose substantive duties or limits on the contracting parties beyond those incorporated in the specific terms of their agreement."[104]

Twitter's argument misconstrues what 1OAK alleges under this claim. According to the Amended Complaint, Twitter frustrated the purpose of the MNDA by excluding 1OAK, in bad faith, from the deal between Twitter and BlackRock even though 1OAK procured BlackRock as a potential investor to Twitter pursuant to the MNDA.[105] 1OAK alleges that it disclosed BlackRock's interest to Twitter pursuant to the MNDA precluding Twitter from using confidential customer information except for a potential business transaction involving 1OAK.[106] The Court finds these facts sufficient to survive dismissal.

b. ABA

Twitter argues that because the ABA was not properly entered into, there can be no implied covenant claim. However, as previously discussed, it is reasonably conceivable that Twitter manifested assent to the terms of the ABA.

Alternatively, Twitter contends that the implied covenant claim places duties on Twitter outside of the scope of the ABA and that 1OAK fails to point to specific contractual provisions out of which Twitter's duties arise. "Every contract in Delaware has an obligation of good faith and fair dealing, which is implied into the agreement by law. This implied covenant was created to promote the spirit of the agreement and to protect against one side using underhanded tactics

[102] *Foley v. Interactive Data Corp.*, 47 Cal. 3d 654, 683 (1988).
[103] *Carma Developers (Cal.), Inc. v. Marathon Dev. Cal., Inc.*, 2 Cal. 4th 342, 373 (1992).
[104] *Guz v. Bechtel Nat'l, Inc.*, 24 Cal. 4th 317, 349–50 (2000).
[105] Am. Compl. ¶¶ 15, 22.
[106] *Id.* ¶ 14.

to deny the other side the fruits of the parties' bargain."[107] "The covenant is 'best understood as a way of implying terms in the agreement,' whether employed to analyze unanticipated developments or to fill gaps in the contract's provisions."[108] However, existing contract terms control such that the implied covenant does not create a "free-floating duty . . . unattached to the underlying legal document."[109]

To state a claim for breach of the implied covenant of good faith and fair dealing, a plaintiff must identify a specific implied contractual obligation, a breach of that obligation, and damages resulting from the breach.[110] The Court's focus is whether, at the time of contract formation, the parties would have prohibited the conduct had they contemplated it or thought to negotiate about it.[111] A plaintiff must allege the breaching party's actions were motivated by an improper purpose reflecting bad faith.[112] Applying the implied covenant in Delaware has been described as a "cautious enterprise."[113]

The Amended Complaint alleges that Twitter frustrated the purpose of the ABA by using underhanded tactics involving unilaterally determining it would terminate 1OAK's status as an approved buyer after 1OAK procured BlackRock's interest.[114] These allegations relate to a specific implied contractual obligation that was breached and caused damage and, therefore, are sufficient to survive dismissal at this stage in the proceedings.

2. Promissory Estoppel

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[107] *Kelly v. McKesson HBOC, Inc.*, 2002 WL 88939, at *10 (Del. Super. Jan. 17, 2002).
[108] *Dunlap v. State Farm Fire & Cas. Co.*, 878 A.2d 434, 441 (Del. 2005) (quoting *E.I. DuPont de Nemours & Co. v. Pressman*, 679 A.2d 436, 443 (Del. 1996)).
[109] *Dunlap*, 878 A.2d at 441.
[110] *Fitzgerald v. Cantor*, 1998 WL 842316, at *1 (Del. Ch. Nov. 10, 1998).
[111] *Cincinnati SMSA Ltd. P'ship v. Cincinnati Bell Cellular Sys. Co.*, 708 A.2d 989, 992 (Del. 1998); *Katz v. Oak Indus. Inc.*, 508 A.2d 873, 880 (Del. Ch. 1986).
[112] *Dunlap*, 878 A.2d at 442.
[113] *Cincinnati SMSA*, 708 A.2d at 992.
[114] Am. Compl. ¶ 13.

Twitter contends the Amended Complaint does not allege that an unambiguous promise was made. "A promise is a manifestation of intention to act or refrain from acting in a specified way, so made as to justify a promisee in understanding that a commitment has been made."[115] A promise must be definite and certain.[116] Under the doctrine of promissory estoppel, a plaintiff must prove by clear and convincing evidence that: "(1) a promise was made; (2) it was the reasonable expectation of the promisor to induce action or forbearance on the part of the promisee; (3) the promisee reasonably relied on the promise and took action to his detriment; and (4) such promise is binding because injustice can be avoided only by enforcement of the promise."[117] Delaware courts have held that a plaintiff can maintain simultaneous claims for breach of contract and promissory estoppel.[118]

The Amended Complaint alleges that Twitter promised 1OAK that it was an approved buyer for Twitter pre-IPO shares and orally encouraged 1OAK to continue to work on the investment transaction.[119] Such an averment is sufficient to defeat a motion to dismiss.

Twitter also argues the Amended Complaint does not allege reasonable reliance because reliance on oral promises is unreasonable. Delaware courts have held that reliance on oral promises is unreasonable when it contradicts the written contract.[120] Comparatively, reliance on oral promises may be reasonable even though the parties are sophisticated and the written agreement contains an integration clause.[121]

Here, 1OAK has alleged reasonable reliance for this stage of the litigation even though 1OAK is a sophisticated entity and both the MNDA and the ABA contain integration clauses.

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[115] RESTATEMENT (SECOND) OF CONTRACTS § 2(1).
[116] *Continental Ins. Co. v. Rutledge & Co.*, 750 A.2d 1219, 1233 (Del. Ch. 2000).
[117] *Grunstein v. Silva*, 2009 WL 4698541, at *7 (Del. Ch. Dec. 8, 2009).
[118] *See, e.g.*, *id.* at *8.
[119] Am. Compl. ¶ 26.
[120] *See Grunstein*, 2009 WL 4698541, at *10–12.
[121] *See id.*

1OAK alleges that it relied on Twitter's oral promises that it would be treated as an approved buyer, despite not having signed the ABA, by encouraging 1OAK to seek investors for the pre-IPO purchase.[122] Ultimately, 1OAK cannot succeed on both the breach of contract and promissory estoppel claims;[123] however, at this stage of the litigation, 1OAK can plead alternative theories of liability.[124] Thus, Twitter's motion to dismiss the promissory estoppel claim is denied.

3. Quantum Meruit/Quasi-Contract

Twitter contends that 1OAK fails to plead a claim for quantum meruit/quasi-contract because it did not request 1OAK's services and it did not agree to compensate 1OAK for any services. Under Delaware law, a claim for quantum meruit requires a plaintiff to show that he "performed services with an expectation that the defendant would pay for them, and that the services were performed under circumstances which should have put the defendant on notice that the performing party expected to be paid by the defendant."[125]

The Amended Complaint sufficiently alleges that Twitter "should have known that Plaintiffs expected that they would be paid for the work performed" and that Twitter requested services from 1OAK.[126] The Amended Complaint further avers that, under the ABA, 1OAK would have been compensated for procuring investors through its fund participation in Twitter stock transactions.[127] The Amended Complaint alleges facts that Twitter requested 1OAK's services by agreeing to the ABA and by encouraging 1OAK to begin to procure investors.[128] Therefore, Twitter's motion to dismiss the quantum meruit/quasi-contract claim is denied.

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[122] Am. Compl. ¶¶ 27–28.
[123] *SIGA*, 67 A.3d at 348.
[124] *Grunstein*, 2009 WL 4698541, at *10–12.
[125] *Shah v. Am. Solutions, Inc.*, 2012 WL 1413593, at *7 (Del. Super. Mar. 8, 2012).
[126] Am. Compl. ¶ 34.
[127] *Id.* ¶ 8.
[128] *Id.*

4. Unjust Enrichment

Twitter argues that California law does not recognize a cause of action for unjust enrichment.[129] Both parties submitted letters to the Court post-oral argument discussing this issue. Because the Court has held that it is premature to decide whether California law applies to this action, the Court will not decide whether California law applies to this claim or whether a cause of action for unjust enrichment exists under California law at this stage of the litigation.

Twitter next contends that even if Delaware law applies, 1OAK's claim should be dismissed for failure to plead specific facts supporting the conclusory allegation that Twitter was enriched from 1OAK's services and that 1OAK was impoverished from providing Twitter services, or any nexus between Twitter's alleged enrichment and 1OAK's alleged impoverishment.

Unjust enrichment is "the unjust retention of a benefit to the loss of another, or the retention of money or property of another against the fundamental principles of justice or equity and good conscience."[130] To survive a motion to dismiss a claim for unjust enrichment, a plaintiff must allege: "(1) an enrichment; (2) an impoverishment; (3) a relation between the enrichment and impoverishment; (4) the absence of justification; and (5) the absence of a remedy provided by law."[131] If a contract governs the parties' dispute, then a claim for unjust enrichment *may* be dismissed.[132]

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[129] *Compare Xperex Corp. v. Viasystems Techs. Corp.*, 2004 WL 3053649, at *3 (Del. Ch. July 22, 2004) ("[T]here is no cause of action in California for unjust enrichment."), *with Hartford Cas. Ins. Co. v. J.R. Marketing, L.L.C.*, 353 P.3d 319, 323, 332 (Cal. 2015) (holding that the insurer could seek reimbursement from counsel under a theory of unjust enrichment as pled in the first amended cross-complaint).
[130] *Nemec v. Shrader*, 991 A.2d 1120, 1130 (Del. 2010) (quoting *Fleer Corp. v. Topp Chewing Gum, Inc.*, 539 A.2d 1060, 1062 (Del. 1988)).
[131] *Nemec*, 991 A.2d at 1130.
[132] *BAE Sys. Info. & Elec. Sys. Integration, Inc. v. Lockheed Martin Corp.*, 2009 WL 264088, at *7 (Del. Ch. Feb. 3, 2009).

In the Amended Complaint 1OAK states that it expended time, money, and resources based on Twitter's assurances that it was an approved buyer under the ABA.[133] 1OAK alleges that they introduced BlackRock's interest to Twitter, and that Twitter and BlackRock ultimately entered into an agreement based on 1OAK's introduction of such interest.[134] 1OAK alleges it was not compensated for these services.[135]

Twitter contends even if Delaware law applies, the unjust enrichment claim must be dismissed because the MNDA and the ABA govern the parties' relationship. Here, based on the factual dispute as to whether the ABA was entered into, the unjust enrichment claim can be plead as an alternative argument for trial.[136] Accordingly, Twitter's motion to dismiss the unjust enrichment claim is denied.

5. Interference with Prospective Business Advantage

To survive a motion to dismiss for tortious interference with prospective business relations, a plaintiff must show: "(1) a reasonable probability of a business opportunity; (2) intentional interference by a defendant with that opportunity; (3) proximate causation; and (4) damages."[137] "The elements of tortious interference with prospective business advantage mirror those of interference with contract."[138]

Twitter argues that its alleged interference with 1OAK's and BlackRock's business relationship was not independently unlawful. "The focus of a claim for tortious interference with contractual relations is upon the defendant's wrongful inducement of a contract termination, not

[133] Am. Compl. ¶ 38.
[134] *Id.* ¶ 39.
[135] *Id.* ¶ 40.
[136] "In some instances, both a breach of contract and an unjust enrichment claim *may* survive a motion to dismiss when pled as alternative theories for recovery." *BAE*, 2009 WL 264088, at *7.
[137] *Beard Research, Inc. v. Kates*, 8 A.3d 573, 607–08 (Del. Ch. 2010).
[138] *ASDI, Inc. v. Beard Research, Inc.*, 11 A.3d 749, 751 (Del. 2010).

upon whether the termination itself was legally justified."[139] Delaware courts consistently recognize a claim for tortious interference when the defendant utilizes "wrongful means" to induce a third party to terminate a contract.[140]

1OAK argues that, as plead in the Amended Complaint, there was a reasonable probability that (i) 1OAK and BlackRock would enter into a transaction involving the purchase of pre-IPO shares in Twitter; (ii) Twitter intentionally interfered with this prospective business relationship by inducing BlackRock to cease business with 1OAK, which caused Twitter to terminate its relationship with 1OAK; (iii) as a result, caused BlackRock to cease its relationship with 1OAK; and (iv) 1OAK suffered damages.[141] Upon review of the relevant portions of the Amended Complaint, the Court finds that 1OAK has plead sufficient facts to survive dismissal.

CONCLUSION

Based on the foregoing, Twitter's motion to dismiss for *forum non conveniens* and for failure to state a claim upon which relief can be granted is **DENIED**.

IT IS SO ORDERED.

/s/ *Eric M. Davis*
Eric M. Davis, Judge

[139] *Id.*
[140] *Id.*
[141] Am. Compl. ¶¶ 30–32.