

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE**

**DSS SUSTAINABLE
SOLUTIONS USA, INC.,**

Plaintiff,

v.

**LEARNING CURVE
ENTERTAINMENT INC., NO
SKY STUDIOS, INC., LEON
DEREK LEONIDOFF, AND
TYMM SMITH,**

Defendants.

Court No. 1:25-cv-00981-JCG

OPINION AND ORDER

[Granting in part and denying in part Defendants’ Partial Motion to Dismiss.]

Dated: June 23, 2026

Beth Moskow-Schnoll and Alan C. Cardenas-Moreno, Ballard Spahr LLP, of Wilmington, DE; Lynn E. Rzonca and Benjamin N. Simler, Ballard Spahr LLP of Philadelphia, PA. Attorneys for Plaintiff DSS Sustainable Solutions USA, Inc.

Hugh Marbury and Joshua Seiler, Cozen O’Connor, of Wilmington, DE. Counsel for Defendants Learning Curve Entertainment Inc. and Leon Derek Leonidoff. Jeremy A Tigan and Cameron P. Clark, Morris, Nichols, Arsht & Tunnell LLP, of Wilmington, DE; Alexander R. McDaniel, Kiernan Trebach, of Virginia Beach, VA. Attorneys for Defendants No Sky Studios, Inc., and Tymmm Smith.

Choe-Groves, Judge: Plaintiff DSS Sustainable Solutions USA, Inc.

(“Plaintiff” or “DSS Sustainable”) filed this case against Defendants Learning

Curve Entertainment Inc., Leon Derek Leonidoff, No Sky Studios, Inc., and Tym Smith (collectively, “Defendants”) alleging breach of contract, tortious interference, unfair competition, conspiracy to injury another in trade, and unjust enrichment. First Am. Compl. at ¶¶ 61–113, (D.I. 27-3).

Before the Court is Defendants’ Partial Motion to Dismiss (“Partial Motion to Dismiss”) (D.I. 32). See Defs.’ Opening Br. Supp. Partial Mot. Dismiss (“Defs.’ Br.”) (D.I. 33).

For the reasons discussed below, Defendants’ Partial Motion to Dismiss is granted in part and denied in part.

BACKGROUND

DSS Sustainable is a Delaware corporation that provides global consulting services related to workplace safety consulting, process safety and asset integrity, enterprise risk management, and business continuity and crisis management. First Am. Compl. at ¶¶ 1, 9–11. DSS Sustainable creates sustainable, risk-based decision-making processes and programs for its clients and does so by drawing on proprietary processes and methodologies that it has developed over the past decade. Id. at ¶¶ 11–20.

Defendant Leon Derek Leonidoff is alleged to be a resident of Virginia who does business as Learning Curve Entertainment Inc. Id. at ¶ 2. Defendant Learning Curve Entertainment Inc. is alleged to be a Virginia corporation with its

principal place of business in Virginia. Id. at ¶ 4. Defendant Tym Smith is alleged to be a resident of Virginia who does business as No Sky Studios, Inc. Id. at ¶ 3. Defendant No Sky Studios, Inc. is alleged to be a Tennessee corporation that is registered in Nashville, Tennessee, but operates primarily or exclusively through Tym Smith from his Virginia residence. Id. at ¶ 5.

Plaintiff alleges that DSS Sustainable engaged each of the Defendants as independent contractors. Id. at ¶ 21. Defendant Leonidoff and his company, Defendant Learning Curve Entertainment, Inc., were engaged on or about November 10, 2009, to provide services pursuant to more than 100 contract addenda and Statements/Scope of Work documents. Id. at ¶ 22. Defendant Smith and his company, Defendant No Sky Studios, Inc., were engaged on or about August 5, 2013, to provide services pursuant to nearly 200 contract addenda and Statements/Scope of Work documents. Id. at ¶ 23. DSS Sustainable and Defendants Leonidoff and Learning Curve Entertainment, Inc. entered into a Master Services Agreement (“MSA”) that became effective on February 28, 2025, and superseded the prior master agreements. Id. at ¶ 27; see Ex. A (“Master Services Agreement”) (D.I. 18-1).¹ DSS Sustainable and Defendants Smith and

¹ Plaintiff placed a copy of a Master Service Agreement between it and Defendant Smith on the record when it filed a response brief for an earlier motion to dismiss. The Parties refer to that language when discussing the MSAs between all Defendants generally, and therefore the Court presumes that the relevant language was the same in the MSA with Defendant Leonidoff. The First Amended

No Sky Studios, Inc. entered into a MSA that became effective on February 20, 2025, and superseded the prior master agreements. Id. at ¶ 29; see Master Services Agreement.

Plaintiff alleges that the MSA gave DSS Sustainable rights to all work product and prohibited Defendants from sharing DSS Sustainable's intellectual property or information provided by DSS Sustainable. Id. at ¶¶ 33–40.

DSS Sustainable has a longstanding relationship with the Port of Virginia and provides safety consulting and related services. Id. at ¶¶ 41–42. In June 2025, DSS Sustainable submitted an invited bid to the Port of Virginia that was rejected. Id. at ¶¶ 43–44. DSS Sustainable alleges that on or around May and June 2025, Defendants agreed to submit to the Port of Virginia a bid and supporting materials for the same project, and used materials and information owned by DSS Sustainable, including materials from DSS Sustainable projects that Defendants were contracted to work on by DSS Sustainable. Id. at ¶ 45. Defendants were awarded the winning bid. Id. at ¶ 50. DSS Sustainable learned of Defendants' conduct when a DSS Sustainable representative attended a meeting in Virginia, during which a Port of Virginia employee presented a slide deck showing Defendants as the bid winners. Id. at ¶ 51.

Complaint's discussion of the MSAs' language also indicates that the relevant provisions were identical. See First Am. Compl. at ¶¶ 33–40.

DSS Sustainable contacted Defendants, demanding that they cease and desist from the unauthorized use of DSS Sustainable's information, return all DSS Sustainable information, and disclose the materials they had submitted to the Port of Virginia. Id. at ¶ 52. Plaintiff alleges that Defendants are still in possession of DSS Sustainable's materials and confidential information. Id. at ¶¶ 54–58. Plaintiff alleges that Defendants have continued to provide services to the Port of Virginia and have continued to use DSS Sustainable's proprietary materials, information, and methodologies for the development, release, and support of the Port of Virginia's safety brand. Id. at ¶ 59.

Plaintiff filed its Complaint on August 5, 2025. Compl. (D.I. 1). On April 10, 2026, the Court granted Plaintiff leave to amend the Complaint. Order (Apr. 10, 2026) (D.I. 31). Defendants' Partial Motion to Dismiss followed.

LEGAL STANDARD

Federal Rule of Civil Procedure 8(a) requires that pleadings contain a short and plain statement of the claim showing that the pleader is entitled to relief. Fed. R. Civ. P. 8(a)(1). If pleadings fail to state a claim, in whole or in part, on which a court may grant relief, a defendant may seek to dismiss a complaint under Federal Rule of Civil Procedure 12(b)(6). Fed. R. Civ. P. 12(b)(6). "To survive a motion to dismiss, a complaint must contain sufficient factual matter, accepted as true, to 'state a claim to relief that is plausible on its face.'" Ashcroft v. Iqbal ("Iqbal"),

556 U.S. 662, 678 (2009) (quoting Bell Atl. Corp. v. Twombly (“Twombly”), 550 U.S. 544, 570 (2007)). “A claim has facial plausibility when the plaintiff pleads factual content that allows the court to draw the reasonable inference that the defendant is liable for the misconduct alleged.” Id. Plausibility requires “more than a sheer possibility that a defendant has acted unlawfully.” Id. In considering a motion to dismiss, the Court must assume the factual allegations contained in the complaint to be true and draw all reasonable inferences in favor of the non-moving party. Twombly, 550 U.S. at 555–56. However, “[t]hreadbare recitals of the elements of a cause of action, supported by mere conclusory statements, do not suffice” to state a claim. Iqbal, 556 U.S. at 678; see Donald J. Kochan, While Effusive, “Conclusory” is Still Quite Elusive: The Story of a Word, Iqbal, and a Perplexing Lexical Inquiry of Supreme Importance, 73 U. Pitt. L. Rev. 215, 307 (2011) (“‘[C]onclusory’ sets a standard that requires a certain degree of case-by-case, contextual analysis”).

DISCUSSION

Defendants move to partially dismiss the First Amended Complaint, arguing that Plaintiff’s tort and unjust enrichment claims are governed by Delaware law according to the MSA’s choice-of-law provision, and the claims are precluded under Delaware’s anti-bootstrapping doctrine. Defs.’ Br. at 7–10. Alternatively,

Defendants contend that Plaintiff's tort claims must be dismissed for failure to state a claim under both Delaware and Virginia law. Id. at 10–22.

I. Choice of Law and Plaintiff's Tort and Unjust Enrichment Claims

The Parties dispute whether the choice-of-law provision in the MSA should be interpreted to cover all of Plaintiff's claims, whether sounding in contract or tort. Id. at 7–9; Pl.'s Br. Opp'n Defs.' Partial Mot. Dismiss ("Pl.'s Resp. Br.") at 4–11, (D.I. 39). Neither Party disputes that the MSA's choice-of-law provision establishes that Plaintiff's breach of contract claim shall be governed by Delaware law. See generally, Defs.' Br; Pl.'s Resp. Br.

Section 15 of the MSA states in relevant part:

15.3. This Agreement shall be governed by, and construed and enforced in accordance with, the law of the State of Delaware without giving effect to the principles of conflicts of law. Each Party consents to the exclusive jurisdiction of, and service of process by, the United States Court for Delaware or the state courts of Delaware with respect to this Agreement.

Master Services Agreement at § 15.3.

The choice of law provision does not contain broad language stating that Delaware law shall govern disputes "arising out of or relating to" the MSA, nor does it contain language stating that Delaware law shall govern "all disputes that may arise" under the MSA. See Huffington v. T.C. Group, LLC, No. N11C-01-030, 2012 WL 1415930, at *11 (Del. Super. Ct. Apr. 18, 2012) ("The choice of law provision, without language such as '*arising out of or relates to*,' only requires

the Court to apply Delaware law to claims challenging the terms and provisions of the Subscription Agreement.” (emphasis in original)); Organ v. Byron, 435 F. Supp. 2d 388, 392 (D. Del. 2006) (distinguishing clauses limiting their reach to the “rights of the parties’ derived from the contract” from those extending to “all . . . aspects of the Agreement”); but see Market Am., Inc. v. Google, Inc., No. 09-494-GMS, 2011 WL 1485616, at *3 (D. Del. Apr. 19, 2011) (holding that the parties intended for Delaware law to govern all disputes related to a license agreement, whether sounding in contract or tort, because the choice of law provision also covered disputes “arising out of or relating to” the agreement).

The facts in this case, without the “arising out of or relating to” language, support a narrow reading of the provision restricting its application to contractual disputes arising directly from the MSA. It is clear to the Court that the narrow provision does not apply more broadly to related conflicts arising from the MSA. Accordingly, the Court will assess Defendants’ arguments regarding duplicative claims by analyzing Delaware and Virginia law, as these are the states’ laws addressed specifically by the Parties in their briefing.

II. Whether Plaintiff’s Tort and Unjust Enrichment Claims are Duplicative of Plaintiff’s Contract Claim

Defendants argue that Plaintiff’s tort and unjust enrichment claims are premised on Defendants’ alleged violations of the MSA, and must be dismissed because Delaware law requires a plaintiff to sue in contract and not tort when an

action is based entirely on a breach of contract rather than a violation of an independent duty. Defs.’ Br. at 9–10. Defendants aver that Virginia law applies a similar “source of duty” analysis that precludes Plaintiff from asserting its tort claims. Defs.’ Reply Br. Supp. Mot. Dismiss (“Defs.’ Reply Br.”) at 4, (D.I. 45).

Plaintiff argues that neither Delaware nor Virginia law precludes the tort and unjust enrichment claims because both states recognize that there are claims in tort for which the duties arise not from the contract itself but from a common law corollary of the contract. Pl.’s Resp. Br. at 9–11. Plaintiff contends that an unjust enrichment claim necessarily assumes the absence of a contract, and is unaffected by bootstrapping or source of duty rules. Id. at 10.

A. Delaware

The prevailing law in Delaware requires that “a plaintiff bringing a claim based entirely upon a breach of the terms of a contract generally must sue in contract, and not in tort.” Data Mgmt. Int., Inc. v. Saraga, No. 05C-05-108, 2007 WL 2142848, at *3 (Del. Super. Ct. July 25, 2007). “[I]f the alleged contractual breach is accompanied by the breach of an independent duty imposed by law, the same factual assertions may support both a breach of contract and tort claim.” OC Tint Shop, Inc. v. CPFilms, Inc., No. 17-1677-RGA, 2018 WL 4658211, at *5 (D. Del. Sept. 27, 2018); see Data Mgmt. Int., Inc., 2007 WL 2142848, at *3 (“[T]he same circumstances may give rise to both breach of contract and tort claims if the

plaintiff asserts that the alleged contractual breach was accompanied by the breach of an independent duty imposed by law.”).

Section 3 of the MSA states that DSS Sustainable would own all work product developed by Defendants, and would retain all right, title, and interest in and to its data and other intellectual property and materials. Master Services Agreement at § 3. Section 3 prohibits Defendants from using or disclosing such data, intellectual property, and other materials. Id. Section 8 of the MSA governs confidential information and prohibits Defendants from disclosing information provided by DSS Sustainable or its clients. Id. at § 8. Section 8 requires the return of all confidential information upon written request and states that the non-disclosure requirements would remain in effect after termination or expiration of the MSA. Id. Defendants were not bound by any exclusivity, non-solicitation, or non-competition provisions. See generally, Master Services Agreement.

The Court concludes that Plaintiff has not asserted sufficient wrongful conduct beyond the alleged breach of the MSA. As Delaware courts have held previously, “[e]ven an intentional, knowing, wanton, or malicious action by the defendant will not support a tort claim if the plaintiff cannot assert wrongful conduct beyond the breach of contract itself.” Data Mgmt. Int., Inc., 2007 WL 2142848, at *3. The Court concludes that Plaintiff has failed to plead any facts showing that Defendants’ “alleged contractual breach was accompanied by the

breach of an independent duty imposed by law.” Id. Plaintiff’s claims that Defendants tortiously interfered with DSS Sustainable’s business and contractual relations or conspired to injure its business prospects are supported by factual allegations premised upon Defendants’ alleged retention, use, and disclosure of DSS Sustainable’s confidential information, work product, materials, and intellectual property. See First Am. Compl. at ¶¶ 77–89, 95–104, 105–111, 112–113. Although Plaintiff frames the unjust enrichment claim as existing necessarily due to the absence of a contract permitting Defendants to use DSS Sustainable’s materials and intellectual property, the MSA contains language prohibiting Defendants from such behavior and Plaintiff’s unjust enrichment claim also appears to restate the alleged breach of contract. Based on the facts pled, the Court concludes that Defendants’ alleged breach of the MSA was not accompanied by an alleged violation of any duty independent from those derived from the MSA. See Data Mgmt. Int., Inc., 2007 WL 2142848, at *3; see also OC Tint Shop, Inc., 2018 WL 4658211, at *6 (dismissing intentional interference with prospective economic relations and intentional interference with contractual relations claims when the Plaintiff attributed such claims to the breach of contract). Plaintiff’s claims are not independent from the MSA, but arise solely therefrom. Accordingly, the Court concludes that Delaware law compels dismissal of Plaintiff’s Counts II–V.

B. Virginia

Virginia abides by the basic principle that tort claims “aris[ing] from [a] contractual relationship . . . may not be pursued as independent causes of action outside the breach of contract context.” Precision & Performance Auto Care, LLC v. James River Petroleum, Inc., 87 Va. App. 508, 523 (2026) (quoting Kent Sinclair & Leigh B. Middleditch, Jr., *Virginia Civil Procedure* § 2.3[A] (7th ed. 2020)); see Erdmann v. Preferred Research Inc. of Georgia, 852 F.2d 788, 791 (4th Cir.1988) (“[A] tort claim normally cannot be maintained in conjunction with a breach of contract claim.”). “To avoid turning every breach of contract into a tort,” Virginia “consistently adhere[s] to the [source-of-duty] rule.” MCR Fed., LLC v. JB&A, Inc., 294 Va. 446, 458 (2017) (quoting Dunn Constr. Co. v. Cloney, 278 Va. 260, 267 (2009)). Under this rule, “in order to recover in tort, the duty tortiously or negligently breached must be a common law duty, not one existing between the parties solely by virtue of the contract.” Id. (quoting Dunn Constr. Co., 278 Va. at 267). “[T]he Source of Duty Rule asks whether the alleged tort is based on the defendant’s performance of a contractual duty.” ITility, LLC v. Staffing Resource Grp., Inc., No. 1:20-cv-477, 2020 WL 6701361, at *4 (E.D. Va. Nov. 13, 2020); see Richmond Metro. Auth. v. McDevitt St. Bovis, Inc., 256 Va. 553, 558 (1998) (“If the cause of complaint be for an act of omission or non-feasance which, without proof of a contract to do what was left undone, would not

give rise to any cause of action (because no duty apart from contract to do what is complained of exists) then the action is founded upon contract, and not upon tort. If, on the other hand, the relation of the plaintiff and the defendants be such that a duty arises from that relationship, irrespective of the contract, to take due care, and the defendants are negligent, then the action is one of tort.” (citations omitted)).

As discussed earlier, Plaintiff’s tort and unjust enrichment claims are based entirely on the breach of the MSA, rather than a violation of an independent duty imposed by law. The damages that Plaintiff allegedly incurred resulted from a breach of those duties assumed only by a contract, and Plaintiff’s arguments to the contrary have not identified an independent duty that would warrant a different conclusion. See Preferred Sys. Sols., Inc. v. GP Consulting, LLC, 284 Va. 382, 407–408 (2012) (McClanahan, J., concurring) (concluding that when a contractual breach is the sole basis for asserting tortious interference “it is the source of duty rule that renders the claim deficient as a matter of law,” and citing cases for the proposition that a contract claim cannot be duplicated as a tort liability by claiming that the breach interfered with plaintiff’s business expectations). Accordingly, the Court concludes that Counts II–V should be dismissed under Virginia law, and Plaintiff’s sole remedy is in contract for the alleged breach of the MSA.

Because the Court has determined that Plaintiff’s tort and unjust enrichment claims must be dismissed under both Delaware or Virginia law, the Court need not

opine on the Parties' remaining arguments concerning whether Delaware or Virginia law governs Plaintiff's tort and unjust enrichment claims, and whether those claims were pled with sufficient particularity pursuant to Rule 12(b)(6).

CONCLUSION

Upon consideration of Defendants' Partial Motion to Dismiss (D.I. 32), and all other papers and proceedings in this action, it is hereby

ORDERED that Defendants' Partial Motion to Dismiss (D.I. 32) is granted in part and denied in part; and it is further

ORDERED that Counts II–V are dismissed; and it is further

ORDERED that Plaintiff's Motion to Strike (D.I. 50) is deemed moot.

IT IS SO ORDERED this 23rd day of June, 2026.

/s/ Jennifer Choe-Groves
Jennifer Choe-Groves
U.S. District Court Judge*

*Judge Jennifer Choe-Groves, of the United States Court of International Trade, sitting by designation.