

**IN THE SUPERIOR COURT OF THE STATE OF DELAWARE**

|                                   |   |                               |
|-----------------------------------|---|-------------------------------|
| ALIGNED DENTAL SUPPORT LLC,       | ) |                               |
|                                   | ) |                               |
| Plaintiff,                        | ) |                               |
|                                   | ) | C.A. No. N25C-11-240 EMD CCLD |
| v.                                | ) |                               |
|                                   | ) |                               |
| RISING TIDE DENTAL PARTNERS, LLC, | ) |                               |
| et al.,                           | ) |                               |
|                                   | ) |                               |
| Defendants.                       | ) |                               |
| _____                             | ) |                               |
|                                   | ) |                               |
| RISING TIDE DENTAL PARTNERS, LLC, | ) |                               |
|                                   | ) |                               |
| Counterclaim and Third-Party      | ) |                               |
| Plaintiff,                        | ) |                               |
|                                   | ) |                               |
| v.                                | ) |                               |
|                                   | ) |                               |
| ALIGNED DENTAL SUPPORT, LLC,      | ) |                               |
|                                   | ) |                               |
| Counterclaim-Defendant            | ) |                               |
|                                   | ) |                               |
| ALESSANDRO GIANNINI, et al.,      | ) |                               |
|                                   | ) |                               |
| Third-Party Defendants.           | ) |                               |

**MEMORANDUM OPINION DENYING MOTION TO DISMISS**

*Submitted: June 29, 2026*

*Decided: August 18, 2026*

**DAVIS, P.J.**

**I. INTRODUCTION**

This is a civil action assigned to the Complex Commercial Litigation Division of the Court. The suit arises from a Business Services Subcontracting Agreement (the “Subcontracting Agreement”) between Plaintiff/Counterclaim Defendant Aligned Dental Support LLC (“Aligned

Dental”) and Defendant/Counterclaim Plaintiff Rising Tide Dental Partners, LLC (“Rising Tide”).<sup>1</sup>

In Counterclaim Count V, Rising Tide asserts a conversion claim against Aligned Dental and its CFO, John Petzold.<sup>2</sup> Aligned Dental moves to dismiss (the “Motion”) Counterclaim Count V under Superior Court Civil Rule 12(b)(6) because: (1) Delaware law does not recognize a cause of action for the conversion of money; (2) the counterclaim sounds in contract; and (3) the counterclaim fails to allege non-conclusory facts as to Mr. Petzold’s individual liability.<sup>3</sup> Rising Tide opposes the Motion.<sup>4</sup> Aligned Dental and Mr. Petzold replied on March 30, 2026.<sup>5</sup> The Court held a hearing on June 29, 2026.<sup>6</sup> At the conclusion of the hearing, the Court took the Motion under advisement.

For the reasons set forth below, the Court **DENIES** the Motion.

## **II. BACKGROUND<sup>7</sup>**

### **A. THE PARTIES**

Rising Tide is a Delaware limited liability company with its principal place of business in New York.<sup>8</sup> Aligned Dental is a Delaware limited liability company with its principal place of business in Sarasota, Florida.<sup>9</sup>

The Motion involves several third-party defendants. Third-Party Defendant Dr. Alessandro Giannini is a Florida resident and is a founder and CEO of Aligned Dental.<sup>10</sup> Third-

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<sup>1</sup> See generally Answer to Compl., Countercls., and Third-Party Compl. [hereinafter “Countercl.”] (D.I. No. 11).

<sup>2</sup> *Id.*, ¶¶ 223–28.

<sup>3</sup> D.I. No. 24.

<sup>4</sup> D.I. No. 30.

<sup>5</sup> D.I. No. 35.

<sup>6</sup> D.I. No. 45.

<sup>7</sup> The facts are drawn from the Countercl. and the documents incorporated into the Countercl.

<sup>8</sup> Countercl., ¶ 11.

<sup>9</sup> *Id.*, ¶ 12.

<sup>10</sup> *Id.*, ¶ 13.

Party Defendant Chris McClure is an Ohio resident and is a founder and Chief Growth Officer (“CGO”) of Aligned Dental.<sup>11</sup> Third-Party Defendant Mr. Petzold is a Florida resident and is a partner and the CFO of Aligned Dental.<sup>12</sup>

## **B. NATURE OF THE DISPUTE**

In 2023, a group of dentists developed and implemented a business plan to enhance their practices and formed Rising Tide to carry out that plan.<sup>13</sup> In October 2024, Aligned Dental and Rising Tide entered into the Subcontracting Agreement.<sup>14</sup>

The Subcontracting Agreement obligated Aligned Dental to provide Rising Tide with several “remote, off-site back-office assistance” services identified in Exhibit D to the Services Agreement (collectively, the “Services”).<sup>15</sup> Aligned Dental needed to perform the Services “with the highest standard of care and in a professional manner consistent with industry standards and the level of service it provides to other similarly situated businesses.”<sup>16</sup> Under the Subcontracting Agreement, Rising Tide would reimburse Aligned Dental for certain expenses and pay Aligned Dental monthly fees.<sup>17</sup> Aligned Dental had to issue monthly invoices to Rising Tide.<sup>18</sup> Rising Tide could terminate the Subcontracting Agreement if Aligned Dental failed to perform its material obligations.<sup>19</sup>

The Subcontracting Agreement also contains a governing law provision that selects Delaware law to govern, construe, and enforce the Subcontracting Agreement.<sup>20</sup>

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<sup>11</sup> *Id.*, ¶ 14.

<sup>12</sup> *Id.*, ¶ 15.

<sup>13</sup> *Id.*, ¶ 19.

<sup>14</sup> Compl., Ex. 2 [hereinafter the “Subcontracting Agreement”] (D.I. No. 1).

<sup>15</sup> Subcontracting Agreement §§ 1.1, 2.6, and Exhibit D.

<sup>16</sup> *Id.*

<sup>17</sup> *Id.*, §§ 3.1–3.2.

<sup>18</sup> *Id.*, § 4.1.

<sup>19</sup> *Id.*, § 2.2.

<sup>20</sup> *Id.*, § 10.3.

The Subcontracting Agreement provided Aligned Dental with access to Rising Tide’s bank account solely to perform Services for Rising Tide, such as managing its financial affairs and paying its accounts payable.<sup>21</sup> Aligned Dental always got Rising Tide’s approval before issuing any significant payments from Rising Tide’s bank account.<sup>22</sup>

Rising Tide issued a termination notice to Aligned Dental on August 8, 2025, effective September 9, 2025.<sup>23</sup> Days after the notice, Mr. Petzold initiated a \$225,500 payment from Rising Tide’s bank account to Aligned Dental.<sup>24</sup> Mr. Petzold did this without written approval.<sup>25</sup> Rising Tide now seeks to recoup the \$225,500 through its conversion counterclaim (“Count V”) in this action.

### **III. STANDARDS OF REVIEW**

#### **A. 12(B)(6) MOTION TO DISMISS FOR FAILURE TO STATE A CLAIM**

Aligned Dental moves under Rule 12(b)(6), seeking dismissal for failing to state a claim upon which relief can be granted. The applicable legal standard requires the Court to “(1) accept all well pleaded factual allegations as true, (2) accept even vague allegations as ‘well pleaded’ if they give the opposing party notice of the claim, [and] (3) draw all reasonable inferences in favor of the non-moving party.”<sup>26</sup> The Court need not “accept every strained interpretation of [Rising Tide’s] allegations”<sup>27</sup> or conclusory statements “unsupported by allegations of specific facts.”<sup>28</sup>

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<sup>21</sup> Countercl., ¶¶ 169, 224–25.

<sup>22</sup> *Id.*, ¶ 170 n.8.

<sup>23</sup> *Id.*, ¶ 132.

<sup>24</sup> *Id.*, ¶¶ 170, 227.

<sup>25</sup> *Id.*

<sup>26</sup> *Cent. Mortg. Co. v. Morgan Stanley Mortg. Cap. Hldgs. LLC*, 27 A.3d 531, 535 (Del. 2011) (citing *Savor, Inc. v. FMR Corp.*, 812 A.2d 894, 896–97 (Del. 2002)).

<sup>27</sup> *Gen. Motors (Hughes) S’holder Litig.*, 897 A.2d 162, 168 (Del. 2006) (quoting *Malpiede v. Townson*, 780 A.2d 1075, 1083 (Del. 2001)).

<sup>28</sup> *In re Lukens Inc. S’holders Litig.*, 757 A.2d 720, 727 (Del. Ch. 1999), *aff’d sub nom.*, *Walker v. Lukens, Inc.*, 757 A.2d 1278 (Del. 2000).

Dismissal is appropriate only if Rising Tide “would not be entitled to recover under any reasonably conceivable set of circumstances susceptible of proof.”<sup>29</sup>

## **B. CONFLICT OF LAWS**

Delaware follows a three-part test to determine the choice of law.<sup>30</sup> Under this test, courts: (1) determine whether the parties made an effective choice of law through their contract; (2) if not, determine whether there is an actual conflict between the laws of the states each party urges should apply; and (3) if so, analyze which state has the most significant relationship to the claims.<sup>31</sup> For the most significant relationship aspect of this test, Delaware looks to the Restatement (Second) of Conflict of Laws.<sup>32</sup> The factors considered under the Restatement for torts are: (a) the place where the injury occurred; (b) the place where the conduct causing the injury occurred; (c) the domicile, residence, nationality, place of incorporation, and place of business of the parties; and (d) the place where the relationship, if any, between the parties is centered.<sup>33</sup>

## **IV. DISCUSSION**

The Court cannot engage in a detailed determination on which law applies here. First, Subcontracting Agreement Section 10.3 does not provide that Delaware law controls Count V. The reason is that Section 10.3 only covers governing, interpreting, and enforcing the Subcontracting Agreement. Count V, however, is a tort claim that is broader than governing, interpreting, and enforcing the Subcontracting Agreement.

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<sup>29</sup> *Savor, Inc. v. FMR Corp.*, 812 A.2d 894, 896–97 (Del. 2002).

<sup>30</sup> *Stillwater Mining Co. v. Nat’l Union Fire Ins. Co. of Pittsburgh, Pa.*, 289 A.3d 1274, 1283 (Del. 2023).

<sup>31</sup> *Id.*

<sup>32</sup> *Certain Underwriters at Lloyds, London v. Chemtura Corp.*, 160 A.3d 457, 465 (Del. 2017).

<sup>33</sup> RESTATEMENT (SECOND) OF CONFLICT OF LAWS [hereinafter “Restatement”] § 145 (A.L.I. 1971).

Second, the Court cannot discern any true conflict between Delaware, New York, and Florida law on whether a conversion claim can be for money. So long as the money is specific and identifiable, seeking the recovery of money can support a conversion claim under all three jurisdictions. Moreover, Count V is well-pled when using the applicable legal standards in all three jurisdictions.

Third, the Court lacks a sufficient factual record to conduct a full choice-of-law analysis under the Restatement even if the law in the three jurisdictions conflict. At this point, the Court does not know where the funds were held, and the location of the funds is usually the most important factor for conversion claims involving funds withdrawn from a bank account.

**A. SUBCONTRACTING AGREEMENT SECTION 10.3 DOES NOT CAPTURE COUNT V BECAUSE IT DOES NOT COVER CLAIMS ARISING OUT OF THE SUBCONTRACTING AGREEMENT.**

Delaware is a contractarian state that supports a parties' freedom to contract.<sup>34</sup> As such, Delaware courts generally prioritize the parties' intentions contained in the four corners of the contract.<sup>35</sup> "In upholding the intentions of the parties, a court must construe the agreement as a whole, giving effect to all provisions therein."<sup>36</sup> "The meaning inferred from a particular provision cannot control the meaning of the entire agreement if such an inference conflicts with the agreement's overall scheme or plan."<sup>37</sup> "Specific language in a contract controls over general language, and where specific and general provisions conflict, the specific provision ordinarily qualifies the meaning of the general one."<sup>38</sup> "When construing a contract, and unless a contrary intent appears, [courts] will give words their ordinary meaning."<sup>39</sup>

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<sup>34</sup> *Thompson St. Capital Partners IV, L.P. v. Sonova United States Hearing Instruments, LLC*, 340 A.3d 1151, 1165–66 (Del. 2025).

<sup>35</sup> *Paul v. Deloitte & Touche, LLP*, 974 A.2d 140, 145 (Del. 2009).

<sup>36</sup> *E.I. du Pont de Nemours and Co., Inc. v. Shell Oil Co.*, 498 A.2d 1108, 1113 (Del. 1985).

<sup>37</sup> *Riverbend Community, LLC v. Green Stone Engr., LLC*, 55 A.3d 330, 334–35 (Del. 2012) (citation omitted).

<sup>38</sup> *Brinckerhoff v. Enbridge Energy Co., Inc.*, 159 A.3d 242, 256 n. 42 (Del. 2017), *as revised* (Mar. 28, 2017) (quoting *DCV Holdings, Inc. v. ConAgra, Inc.*, 889 A.2d 954, 961 (Del. 2005)).

<sup>39</sup> *Citadel Hldg. Corp. v. Roven*, 603 A.2d 818, 824 (Del. 1992).

Where the contract's language is plain and unambiguous, the Court should enforce the contract as written.<sup>40</sup> "If a writing is plain and clear on its face, *i.e.*, its language conveys an unmistakable meaning, the writing itself is the sole source for gaining an understanding of intent."<sup>41</sup>

In full, Subcontracting Agreement Section 10.3 provides that:

THIS AGREEMENT SHALL BE GOVERNED BY, AND CONSTRUED, ENFORCED AND PERFORMED IN ACCORDANCE WITH, THE LAWS OF THE STATE OF DELAWARE, WITHOUT REGARD TO ITS CONFLICTS OF LAW PRINCIPLES. To the fullest extent permitted by applicable law, each Party agrees: (i) that any claim, action or proceeding by such Party seeking any relief arising out of, or in connection with, this Agreement or the transactions contemplated hereby shall be brought only in a state or Federal court located in the State of Delaware and not in any other State or Federal court; (ii) to submit to the exclusive jurisdiction of such courts and waives and agrees not to assert any objection that the laying of such venue has been brought in an inconvenient forum; and (iii) that a judgment in any such action or proceeding may be enforced in other jurisdictions by suit on the judgment or in any other manner provided by applicable law. If a Party elects to incur legal expenses to enforce or interpret any provision of this Agreement by judicial or arbitral proceedings, the prevailing Party in such proceeding will be entitled to recover such legal expenses (including reasonable attorneys' fees, costs and disbursements), in addition to any other relief to which such Party shall be entitled. EACH OF THE PARTIES KNOWINGLY AND VOLUNTARILY WAIVES THE RIGHT TO A TRIAL BY JURY IN RESPECT OF ANY LITIGATION BASED ON, ARISING OUT OF, OR RELATING TO THIS AGREEMENT OR THE TRANSACTIONS CONTEMPLATED HEREBY.<sup>42</sup>

The provision's choice-of-law clause does not cover litigation arising out of or relating to the Subcontracting Agreement.<sup>43</sup> Rather, Delaware law covers only contractual enforcement, governance, and interpretation.

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<sup>40</sup> *Lorillard Tobacco Co. v. Am. Legacy Found.*, 903 A.2d 728, 740 (Del. 2006); *Diner v. Plume Design, Inc.*, 354 A.3d 968, 981 (Del. Super. 2026); *Jiggy Puzzles, LLC v. Steelhead Acquisition EE, Inc.*, 2026 WL 465112, at \*6 (Del. Super. Feb. 18, 2026).

<sup>41</sup> *City Investing Co. Liquidating Tr. v. Cont'l Cas. Co.*, 624 A.2d 1191, 1198 (Del. 1993).

<sup>42</sup> Subcontracting Agreement § 10.3.

<sup>43</sup> *Compare id.*, with *SPay, Inc. v. Stack Media Inc.*, 2021 WL 1109181, at \*3–4 (Del. Ch. Mar. 23, 2021).

Count V does not involve any of these. The Court need not enforce, interpret, or govern the Subcontracting Agreement to determine whether the Aligned Dental Parties wrongfully exercised dominion over Rising Tide’s property. Count V falls outside the provision’s reach, as conversion is not a breach of contract.<sup>44</sup>

The Parties also agreed that any claim arising out of or in connection with the Subcontracting Agreement had to be brought in Delaware.<sup>45</sup> The Parties used the same broad language in the jury trial waiver as well.<sup>46</sup> The Parties therefore knew how to draft this broad language elsewhere in the same provision. The Court finds that the absence of broader language from the first sentence of Section 10.3 demonstrates that Delaware law does not necessarily cover tort claims beyond the four corners of the Subcontracting Agreement.<sup>47</sup>

The Aligned Dental Parties cite *Abry Partners V, L.P. v. F & W Acquisition LLC*<sup>48</sup> to argue that Section 10.3 should govern all claims arising under the Subcontracting Agreement. There, the Court of Chancery determined that a similarly worded choice-of-law provision captured a fraudulent inducement claim relating to the agreement.<sup>49</sup> The Court of Chancery recognized that: (1) the Restatement (Second) of Conflict of Laws states that misrepresentation,

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<sup>44</sup> See *Gloucester Holding Corp. v. U.S. Tape & Sticky Products, LLC*, 832 A.2d 116, 124 (Del. Ch. 2003) (holding that choice-of-law provision that only covered the parties’ rights derived from the contract did not cover fraud claims relating to the transaction); see also *Vichi v. Koninklijke Philips Elecs., N.V.*, 85 A.3d 725, 770 (Del. Ch. 2014) (deciding that a note’s provision that it shall be governed by and construed in accordance with English law did not extend to non-contractual fraud claims); *Ramco Asset Mgmt., LLC v. USA Rare Earth, LLC*, 2024 WL 1716399, at \*7–8 (Del. Ch. Apr. 22, 2024), *aff’d sub nom. US Trading Co. Metals RE, LLC v. USA Rare Earth, LLC*, 2026 WL 817627 (Del. Mar. 25, 2026), and *aff’d sub nom. US Trading Co. Metals RE, LLC v. USA Rare Earth, LLC*, 2026 WL 817627 (Del. Mar. 25, 2026) (ruling that choice-of-law provision stating that the agreement is governed by New York law was not broad enough to encompass tort claims relating to contract formation).

<sup>45</sup> Subcontracting Agreement § 10.3.

<sup>46</sup> *Id.*

<sup>47</sup> See *In re Verizon Ins. Coverage Appeals*, 222 A.3d 566, 578 (Del. 2019) (finding that referring to a term elsewhere in a policy demonstrated that the parties knew how to use that term but intentionally excluded from other provisions); see also *Active Asset Recovery, Inc. v. Real Est. Asset Recovery Servs., Inc.*, 1999 WL 743479, at \*11 (Del. Ch. Sept. 10, 1999) (applying the maxim of *expressio unius est exclusio alterius* to explain that the exclusion of one term coupled with the inclusion of other, parallel terms “speaks volumes”).

<sup>48</sup> 891 A.2d 1032 (Del. Ch. 2006).

<sup>49</sup> *Id.* at 1050.



duress, undue influence, and mistake upon a contract are determined by the law selected by the parties; and (2) the agreement provided for remedies for misrepresentations.<sup>50</sup>

But conversion is distinguishable from fraudulent inducement.<sup>51</sup> Fraudulent inducement involves the contractual bargaining process, and a potential remedy is contract rescission.

Fraudulent inducement relates to contract enforcement and governance because the claim can void a contract and affect its enforceability and performance.<sup>52</sup> Fraudulent inducement is also a contract enforcement defense.<sup>53</sup> Conversion differs. Conversion claims are not related to the contractual bargaining process.

The Court understands that the Parties' relationship revolved around the Subcontracting Agreement. Moreover, Aligned Dental would not have access to Rising Tide's accounts without the Subcontracting Agreement. But an unauthorized transfer of money from an account can be a tort separate from the contractual relationship.<sup>54</sup> The Subcontracting Agreement does not expressly govern the alleged conduct such as to make a conversion counterclaim a true breach-of-contract counterclaim.<sup>55</sup> Accordingly, Section 10.3 is not broad enough to cover Count V.

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<sup>50</sup> *Id.* at 1047–49.

<sup>51</sup> See *SPay, Inc.*, 2021 WL 1109181, at \*3 (“Claims for fraudulent inducement arise out of the contract the plaintiff allegedly was induced to enter.”).

<sup>52</sup> See *Hegarty v. Am. Commonwealths Power Corp.*, 163 A. 616, 619 (Del. Ch. 1932) (noting that where a party is induced to enter an agreement by fraudulent misrepresentation, that party can either: (i) “let the contract stand, retaining all that he obtained thereunder, and maintain an action at law to recover damages for fraud” or (ii) “choose to regard the contract as never having been entered into and seek relief based on rescission.”).

<sup>53</sup> *Xu Hong Bin v. Heckmann Corp.*, 2009 WL 3440004, at \*9 (Del. Ch. Oct. 26, 2009).

<sup>54</sup> See *Data Mgmt. Internationale, Inc. v. Saraga*, 2007 WL 2142848, at \*4 (Del. Super. July 25, 2007) (“The existence of a contractual relationship between the parties may determine the outcome of DMI’s conversion claim by establishing whether or not the personal property was abandoned, but this does not mean that the Lease was the source of the duty DMI claims was violated. Rather, the obligation not to misappropriate another’s property arises from general common law tort principles and exists independent of any contractual relationship between the parties.”).

<sup>55</sup> See *Garber v. Whittaker*, 174 A. 34, 36 (Del. Super. 1934) (“In order to constitute a tort there must always be a violation of some duty owed to the plaintiff; but generally speaking such a duty must arise by operation of law and not by the mere agreement of the parties.”) (quoting *Diver v. Miller*, 148 A. 291, 293 (Del. Super. 1929)).

**B. THERE IS NO CONFLICT BETWEEN DELAWARE, FLORIDA, AND NEW YORK LAW ON CONVERSION FOR MONEY, AND RISING TIDE STATES A REASONABLY CONCEIVABLE COUNTERCLAIM FOR CONVERSION.**

Because Subcontracting Agreement Section 10.3 does not necessarily govern the conversion claim, the Court must determine whether a true conflict exists between the potentially applicable jurisdictions.<sup>56</sup> A true conflict exists if the competing jurisdictions would produce different results.<sup>57</sup> Here, the issue is whether Rising Tide can bring a conversion counterclaim for money taken from its bank account.

Aligned Dental cites *Schatzman v. Modern Controls, Inc.*<sup>58</sup> and several other Delaware trial court decisions, arguing that Delaware law does not recognize a cause of action for the conversion of money.<sup>59</sup> The Court notes that those cases dealt with contractually-related debts.<sup>60</sup> Count V does not seek only to recoup a payable debt. Court V seeks to recover specific funds wrongly transferred from a bank account.<sup>61</sup> The trial court decisions dismissing conversion claims largely trace back to *Goodrich v. E.F. Hutton Group, Inc.*<sup>62</sup> There, the Court of Chancery recognized that no Delaware court has recognized a cause of action for conversion of money compared to goods.<sup>63</sup> The Court of Chancery, however, still opined that an action for

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<sup>56</sup> *Mills Ltd. P'ship v. Liberty Mut. Ins. Co.*, 2010 WL 8250837, at \*4 (Del. Super. Nov. 5, 2010).

<sup>57</sup> *Id.*

<sup>58</sup> 2024 WL 4249939 (Del. Super. Sept. 20, 2024).

<sup>59</sup> *Id.* at \*15; *Kuroda v. SPJS Holdings, L.L.C.*, 971 A.2d 872, 890 (Del. Ch. 2009).

<sup>60</sup> See *Schatzman*, 2024 WL 4249939, at \*16 (dismissing conversion claim for money plaintiff only was entitled to through contract and was never in plaintiff's possession); see also *Kuroda*, 971 A.2d at 890 (dismissing conversion claim that sought to fulfill a contractual obligation that could be satisfied by the payment of money generally); *Xu Hong Bin*, 2009 WL 3440004, at \*13 (dismissing conversion counterclaim that was not based on money that could be described or identified as specific chattel and return of the disputed money depended on an analysis of contract principles).

<sup>61</sup> True, the Subcontracting Agreement requires Rising Tide to pay Aligned Dental for its services. But the Subcontracting Agreement does not govern how those payments are made, nor does it govern Aligned Dental's transfer of funds to itself from a Rising Tide bank account to which it had access under the Subcontracting Agreement. And the Subcontracting Agreement is silent on whether Aligned Dental could pay itself through the bank accounts it had access to under the Agreement.

<sup>62</sup> 542 A.2d 1200 (Del. Ch. 1988).

<sup>63</sup> *Id.* at 1203.

conversion of money will lie where there is an obligation to return the identical money delivered by the plaintiff to the defendant.<sup>64</sup> Under Delaware law, a party can state a claim for conversion where there is an obligation to return the identical money to the injured party.<sup>65</sup> There is no hard rule in Delaware that money itself can never be the basis for a conversion claim. Accordingly, Delaware law does not necessarily prohibit conversion claims for specific identifiable lump sums of money.

Under Florida law, a simple debt that the payment of money can discharge generally cannot form the basis of a conversion claim.<sup>66</sup> For a conversion claim involving money, there must be an obligation to keep intact or deliver the specific money in question, so that the money is identifiable.<sup>67</sup> The withdrawal of funds from a bank account can form the basis of a conversion claim if the specific money in question can be identified.<sup>68</sup> And money is identifiable when it is delivered at one time, by one act, and in one mass.<sup>69</sup>

Similarly, in New York, money can be the basis of a conversion claim if the money is specifically identifiable.<sup>70</sup> On top of being specifically identifiable, the money must be subject to an obligation to be returned or otherwise treated in a particular manner.<sup>71</sup>

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<sup>64</sup> *Id.*

<sup>65</sup> *Goodrich*, 542 A.2d at 1203.

<sup>66</sup> *Gasparini v. Pordomingo*, 972 So. 2d 1053, 1055 (Fla. Dist. Ct. App. 2008).

<sup>67</sup> *Walker v. Figarola*, 59 So. 3d 188, 190 (Fla. Dist. Ct. App. 2011).

<sup>68</sup> *Joseph v. Chanin*, 940 So. 2d 483, 486 (Fla. Dist. Ct. App. 2006); *Allen v. Gordon*, 429 So. 2d 369, 371 (Fla. Dist. App. 1983).

<sup>69</sup> *Id.*

<sup>70</sup> *Freedom Holding, Inc. v. Haart*, 172 N.Y.S.3d 873, 882 (N.Y. Sup. Ct. 2022); *Petrone v. Davidoff Hutcher & Citron, LLP*, 54 N.Y.S.3d 25, 27 (App. Div. 2017); *see also Payne v. White*, 477 N.Y.S.2d 456, 458 (App. Div. 1984) (holding that withdrawal of funds from a specific bank account were identifiable and could support a conversion claim).

<sup>71</sup> *Republic of Haiti v. Duvalier*, 626 N.Y.S.2d 472, 475 (App. Div. 1995).

The Court finds no apparent conflict among the jurisdictions, as all three allow conversion claims for specifically identified money. So, the Court need not conduct a choice-of-law analysis because there is no true conflict on this point.

The Court also finds that Rising Tide states a reasonably conceivable conversion counterclaim. Conversion is an act of dominion wrongfully exerted over another's property, in denial of or inconsistent with the injured party's rights in the property.<sup>72</sup> The elements are: (1) the injured party had a property interest in the converted goods; (2) the injured party had a right to possession of the goods; and (3) damages.<sup>73</sup>

Rising Tide alleges that it owned the money in its bank account, Mr. Petzold sent Aligned Dental \$225,500 from the account, and Rising Tide no longer has this money.<sup>74</sup> Rising Tide had a right to possess the funds in the bank account because it owned the account. The Subcontracting Agreement does not require Aligned Dental to return the funds, so there is no detrimental overlap of Count V and Rising Tide's breach-of-contract counterclaim.<sup>75</sup> Aligned Dental does not identify which Subcontracting Agreement provision covers this conduct, and the Subcontracting Agreement lacks any governing provisions addressing authorization of bank account use or unauthorized bank account use.<sup>76</sup> Rising Tide alleges specific monies that are

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<sup>72</sup> *Drug, Inc. v. Hunt*, 168 A. 87, 93 (Del. 1933).

<sup>73</sup> *Goodrich*, 542 A.2d at 203.

<sup>74</sup> The Aligned Dental Parties contend that there are only conclusory facts about Mr. Petzold. But the Counterclaim sufficiently alleges that Mr. Petzold transferred the funds and was not authorized to do so. Countercl. ¶¶ 172–74. And the Subcontracting Agreement does not state that Mr. Petzold was authorized to do this. So Rising Tide sufficiently alleges a wrongful act of dominion.

<sup>75</sup> See *Xu Hong Bin*, 2009 WL 3440004, at \*13 (dismissing conversion claim where a return of the money depended on an analysis of contract principles).

<sup>76</sup> Also, “[o]ne who is authorized to make a particular use of a chattel, and uses it in a manner exceeding the authorization, is subject to liability for conversion to another whose right to control the use of the chattel is thereby seriously violated. RESTATEMENT (SECOND) OF TORTS § 228 (A.L.I 1965); see also *State ex rel. Jennings v. Monsanto Co.*, 299 A.3d 372, 384 n.73 (Del. 2023) (recognizing that Delaware courts consider the Restatement (Second) of Torts as persuasive authority and promotive of humanitarian goals). Even if Mr. Petzold had access to the bank account through a contractual arrangement, exceeding the scope of that access can go beyond a breach of contract. And the Subcontracting Agreement does not cover this conduct.

identifiable. Mr. Petzold sent funds from an identifiable bank account to Aligned Dental without permission, and Rising Tide may have a right to recover those exact funds. Rising Tide therefore pleads a reasonably conceivable conversion counterclaim in Count V.

**C. ALTERNATIVELY, IF THERE IS A CONFLICT AMONG DELAWARE, NEW YORK, AND FLORIDA LAW, THE COURT CANNOT CONDUCT A CHOICE-OF-LAW ANALYSIS UNDER THE CURRENT RECORD.**

Even if Delaware law conflicts with the other two jurisdictions, the Court cannot conduct a proper choice-of-law analysis at this stage. For tort claims, the Restatement instructs the Court to consider: (a) the place where the injury occurred; (b) the place where the conduct causing the injury occurred; (c) the domicile, residence, nationality, place of incorporation and place of business of the parties; and (d) the place where the relationship, if any, between the parties is centered. This fact-intensive inquiry can be inappropriate at the motion-to-dismiss stage.<sup>77</sup>

For the first factor—often the most important—the Parties have not identified where the funds were kept. The place of injury for a conversion claim is usually the state where the account is located.<sup>78</sup> The record contains no information as to where the bank account was located. Without this, the Court cannot weigh the most important factor.

The second factor seems to favor Florida, as Mr. Petzold lived there, and Aligned Dental has its principal place of business in Florida. If Mr. Petzold transferred the funds while in Florida to a Florida-based company, that is likely where the conduct causing the injury occurred.

Third, the relevant parties span across all three jurisdictions. Rising Tide has its principal place of business in New York and is incorporated in Delaware. Rising Tide has its principal

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<sup>77</sup> See *Barrera v. Monsanto Co.*, 2016 WL 4938876, at \*11 (Del. Super. Sept. 13, 2016); see also *Tjahjono v. Westinghouse Air Brake Techs. Corp.*, 2024 WL 1287085, at \*5 (W.D. Pa. Mar. 26, 2024).

<sup>78</sup> *Wiggins v. Bank of Am., N. Am.*, 488 F. Supp. 3d 611, 636 (S.D. Ohio 2020); *In re Am. Crop Servs., Inc.*, 2001 WL 121767 (Bankr. W.D. Tenn. Feb. 12, 2001).

place of business in Florida and is incorporated in Delaware. Mr. Petzold resides in Florida. This factor provides little insight into which state has the most substantial relationship.

Fourth, it is unclear from the current factual record where the relationship was centered. Still, New York and Florida seem to outweigh Delaware here. There were only incorporations in Delaware, and the relevant locations here are New York and Florida, because those are where the Parties acted.<sup>79</sup>

With that, even if there is a conflict between the jurisdictions, the Court cannot conduct a proper substantial relationship test without a more fully developed record.

## V. CONCLUSION

For the above reasons, the Court **DENIES** the Motion.

**IT IS SO ORDERED.**

August 18, 2026  
Wilmington, Delaware

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

cc: File&ServeXpress

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<sup>79</sup> The fact that parties are incorporated or organized under Delaware law can be a relatively weak factor in a given conflict-of-law analysis. *See Focus Fin. Partners, LLC v. Holsopple*, 250 A.3d 939, 966 (Del. Ch. 2020) (“By contrast, under the *Restatement* test, the fact that Sensus was incorporated in Delaware is the weakest factor for purposes of an employment dispute.”).