UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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ONTARIO TEACHERS' PENSION PLAN BOARD,

Plaintiff,

-against-

IG HOLDINGS, INC.,

Defendant.

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99CV3616
OPINION AND ORDER

RICHARD CONWAY CASEY, U.S.D.J.:

Plaintiff Ontario Teachers' Pension Plan Board ("Ontario Teachers" or "Plaintiff"), a non-share capital corporation continued under the Teachers Pension Act, R.S.O. 1990, c. T.1, with its principal place of business in Ontario, Canada, brought this case against IG Holdings, Inc. ("IG Holdings" or "Defendant"), a corporation organized and existing under the laws of the state of Arizona, with its principal place of business in Phoenix, Arizona, alleging conversion, fraud, and fraudulent inducement in connection with a "mini-tender offer" for convertible debt securities issued by Trizec Hahn. IG Holdings has brought a motion to dismiss the Complaint, pursuant to Federal Rule of Civil Procedure 12(b)(6) for failure to state a claim for which relief may be granted. For the reasons discussed herein, Defendant's motion is granted and the Complaint is dismissed.

I. Federal Jurisdiction

This case is properly in this court based on diversity citizenship, pursuant to Title 28 of

the United States Code, Section 1332. The amount in controversy exceeds $75,000. Venue is proper in the Southern District of New York because a substantial part of the acts or omissions giving rise to the action occurred here. 28 U.S.C. §1391; Gordon v. Hohmann, 434 F. Supp. 629 (S.D.N.Y. 1977).

II Background

On January 28, 1999, Defendant, a corporation engaged in the business of investing in securities, including equities, bonds and limited partnership interests, commenced a mini-tender offer (the "Tender Offer") for 2% of the total outstanding issue of Trizec Hahn Corp. 3% 28JAN2021 Debentures (the "Bonds") by distributing offering materials to Depository Trust Company ("DTC"), which offer was to expire at 5:00pm Eastern Time on March 3, 1999. The price offered was $525.00 per ($1000 par) bond, less any distributions paid on or after December 1, 1998. Specifically, the tender offer was an "offer to purchase for cash up to 2.0% of the total outstanding issue of Trizec Hahn (3%-21) . . . for $525.00 cash per bond by IG Holdings, Inc." Tender Offer, Affirmation of Steven J. Shore (dated July 21, 1999) ("Shore Affirmation"), Exhibit B at 1. On page one of the Tender Offer materials sent to Plaintiff, the offer provides:

> [w]e are offering an opportunity to sell your bonds of Trizec Hahn (3%-21) for $525.00 per ($1000.00 par) bond less any distributions paid on or after December 1, 1998. Please respond quickly as bonds will be accepted on a first-come, first-buy basis. The purchase price has been determined at the sole discretion of IG Holdings, Inc. and may not represent the fair market value of the bonds. We recommend that you consult with a financial planner or tax accountant before making any decisions with respect to our offer. The date of this offer is January 28, 1999; it will expire at 5:00pm ET on March 3, 1999. . . . IG Holdings, Inc. may assign its interest in any bonds to any entity, while retaining the obligation to pay sellers. IG Holdings, Inc. may purchase or sell additional bonds at any point in the future at prices which may differ from the price offered herein.

Mini-tender offers, which are for less than 5% of a class of securities, are not subject to the

requirements of Section 14(d) of the Exchange Act and Regulation 14D, however, they are subject to the antifraud provisions of the federal securities laws.

On March 2, 1999, Plaintiff, through its custodian, State Street, sent its letter of transmittal to DTC which, in turn, forwarded it to Defendant via Defendant's information agent, BSE Information Services, Inc. ("BSE"), purporting to sell its full holdings in the Bonds ($10,000,00 par), which amounted to approximately 3.5% of the outstanding issue of the Bonds. On March 3, 1999, Plaintiff alleges that it "learned that, contrary to the offer to Purchase, the price offered by IG Holdings for the Bonds was at a discount to the market, not a premium." Complaint ¶ 21. Plaintiff further alleges that on the morning of March 3, 1999, Plaintiff, through its custodian State Street, advised DTC and BSE that Plaintiff was "withdrawing its counteroffer." Complaint ¶ 22. Plaintiff claims that it never received any communication from IG Holdings indicating that IG Holdings accepted its "counteroffer." Plaintiff claims that Defendant advised that it had already committed the Bonds to one of its strategic income funds and refused to allow Plaintiff to revoke its offer, pursuant to strict internal guidelines regarding the processing of notes, bonds or stock through DTC. Complaint ¶ 24. State Street communicated this to IG Holdings in a letter dated March 3, 1999. In pertinent part, the letter states:

> In regards to the IG Holdings offer to purchase up to 2% of the total outstanding Trizec Hahn Corp. 3% 28JAN2021 Debentures for approximately $525 per $1000 par bond, we had recently sent instructions to the Depository Trust Company to tender 10,000,000 shares on behalf of the Ontario Teachers Pension Plan Board. This morning, the Investment Manager of this mutual fund decided they no longer would like to have their 10,000,000 shares tendered to this offer. I do realize there were no withdrawal rights afforded in this offer, however my client would greatly appreciate the consideration of IG Holdings in this matter. . . .

March 3, 1999 Letter, Shore Affirmation, Exhibit D. Defendant refused to permit Plaintiff to "withdraw" its tender.

Plaintiff alleges that it is entitled to recover damages from Defendant in conversion, because no contract for the sale of the Bonds was formed . Plaintiff argues that it made a counteroffer to Defendant which Plaintiff revoked prior to acceptance by Defendant. Plaintiff further argues that Defendant had no rights to the Bonds, therefore, Defendant's refusal to return the Bonds amounted to conversion.

In its second claim for relief, Plaintiff argues that it is entitled to recover against Defendant for fraud because Defendant "accomplished its fraudulent and manipulative scheme through various misrepresentations and omissions upon which Ontario Teachers reasonably relied to its detriment, and upon which the Defendant intended Ontario Teachers to so rely." Complaint ¶ 33. In support of this allegation, Plaintiff claims that Defendant failed to disclose that the price offered was below market; misrepresented that the offer price "may not" be fair, when defendant allegedly knew that was not the case, and failed to disclose a trading history for the Bonds, because "doing so would both highlight that the offer was at a discount to the market and avoid the confusion that otherwise would result in converting the market price (quoted in Canadian Dollars) and the offer price (quoted in U.S. Dollars)." Complaint ¶ 34(c). Further, Plaintiff alleges that Defendant knew this to be a material omission, because on January 28, 1999, Defendant publicly stated that it would include such information in its tender offers, in response to an SEC request to such effect. Plaintiff further argues that Defendant falsely stated that not more than 2% of the Bonds would be accepted when, in fact, "Defendant intended to accept as many Bonds as were tendered – since the price offered was at a discount to the market, thereby insuring that Defendant could make a quick profit on any Bonds tendered." Id. ¶ 34(d). Plaintiff claims that the above are representations or omissions which were known to be untrue by Defendant and were intended to and did deceive Plaintiff. Plaintiff argues that Defendant's

conduct was fraudulent, intentional, egregious and with conscious disregard of Plaintiff's rights, and was part of a pattern directed at the public generally. Therefore, in addition to a financial loss for which Plaintiff is seeking $1.8 million in damages, Plaintiff argues that it is entitled to punitive damages.

Plaintiff's last claim for relief if for fraudulent inducement. Plaintiff argues that Defendant fraudulently induced it to tender its Bonds by making material misrepresentations and omissions, which Defendant knew to be false, upon which Plaintiff reasonably relied to its determined and upon which the Defendant intended Plaintiff to rely.

III Analysis

In order for a party to succeed on a motion to dismiss under Rule 12(b)(6), it must be clear that the plaintiff can prove no set of facts that would establish his or her claim for relief. Conley v. Gibson, 355 U.S. 41, 45-46 (1957); Cohen v. Koenig, 25 F.3d 1168, 1172 (2d Cir. 1994).

When making a determination of whether plaintiff can prove any set of facts which would entitle him or her to relief, a court must assume that the allegations in the complaint are true and draw all reasonable inferences in the plaintiff's favor. Cooper v. Pate, 378 U.S. 546, 546 (1964); Kaluczky v. City of White Plains, 57 F.3d 202, 206 (2d Cir. 1995). Vague and conclusory allegations, however, are not sufficient to withstand a motion to dismiss. A complaint must "contain allegations concerning each of the material elements necessary to sustain recovery under a viable legal theory." American Council of Learned Societies v. MacMillan, Inc., 1996 WL 706911, at *3. Accordingly, the Court has reviewed the pleadings in an effort to determine whether Plaintiff states a claim on which relief can be granted.

A. Fraud and Fraudulent Inducement[1]

Because of the similarity of the Plaintiff's fraud claim and fraudulent inducement claim, the Court will discuss them together. Plaintiff's second claim for relief alleges that it is entitled to recover for fraud. Specifically, Plaintiff alleges that Defendant was involved in a fraudulent and manipulative scheme through various misrepresentations and omissions upon which Plaintiff relied and on which Defendant intended Plaintiff to rely. In order to state a claim for fraud, Plaintiff must allege that Defendant misrepresented a material fact, knowing it was false, and that Plaintiff relied on such misrepresentation to its detriment. Gordon & Co. v. Ross, 84 F.3d 542, 544 (2d Cir. 1996). New York law not only prohibits a party from affirmatively misrepresenting a material fact; it also recognizes a duty to speak "where the party had made a partial or ambiguous statement, on the theory that once a party has undertaken to mention a relevant fact it cannot give only half of the truth." Brass v. American Film Techs., 987 F.2d 142, 150 (2d Cir. 1993).

Plaintiff's third claim for relied is for fraudulent inducement. In order to state a claim for fraudulent inducement, Plaintiff must show that Defendant knowingly made a false representation as to a material fact, for the purpose of inducing Plaintiff to rely upon it, causing Plaintiff to rely on it in ignorance of its falsity and to its injury. United States v. Rodolitz, 786 F.2d 72, 76 (2d Cir. 1986).

Plaintiff argues that Defendant has a duty to disclose that the Tender Offer was below market value because the term "tender offer" mislead Plaintiff and exploited the conventional understanding that tender offers are made at premium to the market. Plaintiff argues that this

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[1]The Court will address Plaintiff's second and third claims for relief first, for ease of discussion.

characterization as a tender offer was a partial truth and was ambiguous and was misleading without any further disclosure. United States v. Federal Record Service Corp., 1999 WL 335826, at *17 (S.D.N.Y. May 24, 1999). Plaintiff argues that by using the tender offer machinery and terminology, and by affirmatively stating that the offer price "may not" represent the fair market value, when in fact it did not represent the fair market value, amounts to a misrepresentation or, at a minimum, a half-truth. Plaintiff's Memorandum in Response at 16. In its Complaint, Plaintiff argues that Defendant knew that the offer price was not fair "because the Trizec Tender Offer was specifically designed to acquire Bonds, if at all, at a discount to the market." Complaint ¶ 34(b).

Plaintiff also argues that Defendant failed to disclose a trading history for the Bonds, which would "both highlight that the offer was at a discount to the market and avoid the confusion that otherwise would result in converting the market price (quoted in Canadian dollars) and the offer price (quoted in U.S. dollars)." Plaintiff claims that Defendant "falsely stated that not more than 2% of the Bonds would be accepted, when, in fact, Defendant intended to accept as many Bonds as were tendered . . . ." Complaint ¶ 34(d). Plaintiff argues that these alleged misrepresentations and omissions were intended to and did deceive Plaintiff. Complaint ¶¶ 34, 35.

Plaintiff is correct in that a party has a duty to speak if it made a partial or ambiguous statement. The reasons for this are to protect parties from being "tricked" into entering into agreements, here, accepting a tender offer, while relying on or being deceived by less than accurate facts. The facts of this case do not give rise to a duty on the part of Defendant to speak. Here, Defendant did not possess superior knowledge not available to Plaintiff and the parties were involved in an arms length transaction.

Plaintiff Ontario Teachers is a Canadian $59.1 billion pension plan. The fear that an unsophisticated investor may be somehow tricked into accepting a tender offer is absent here. Plaintiff is a sophisticated company with sophisticated legal and financial representation. Further, by Plaintiff's own admission, it was working with State Street to accomplish this transaction. The Court finds no merit in Plaintiff's argument that it was unaware of the market price of the Bonds, that it was unable to discover the trading history of the Bonds, or that it was unable to convert the purchase price quoted in the Tender Offer from American Dollars to Canadian Dollars. Further, there is no requirement that a tender offer be made at a premium to the fair market value.

Plaintiff does not allege that any act or omission of Defendant prevented Plaintiff from conducting its own independent research into the market price or trading history of the Bonds. The Bonds are publicly traded. Furthermore, it is of no consequence that the offer price was listed in American Dollars, versus Canadian Dollars. As already stated, Plaintiff is a multi-billion dollar pension plan, which invests money and enters into financial agreements on a regular basis. Indeed, Plaintiff is the ultimate professional investor, with resources devotes solely to investigating investment opportunities. The Court deems it safe to assume that Plaintiff is sufficiently familiar with the American stock exchanges and is sufficiently sophisticated to understand currency exchange ratios. Further, the Court deems it safe to assume that Plaintiff has available to it sufficient resources and financial expertise to discover such information, including the fair market value of the Bonds, had it made a reasonable investigation as a prudent investor. The Court cannot provide relief for Plaintiff's error in failing to properly and adequately investigate and convert the trading prices to American Dollars, or convert the Tender Offer price to Canadian Dollars.

Further, the Court finds that the language of the Tender Offer was not ambiguous. Contract language is ambiguous when it is susceptible to more than one meaning when viewed objectively by a reasonably intelligent person who is informed of the customs, practices, usages and terminology, as they are understood in the particular trade or business. Sayers v. Rochester Telephone Corporation Supplemental Management Pension Plan, 7 F.3d 1091, 1095 (2d Cir. 1993). The Tender Offer stated in no uncertain terms that the price was determined in the sole discretion of Defendant and may not represent the fair market value of the Bonds. The Court holds that such language, read in conjunction with the suggestion that any investor consult a financial planner or tax accountant before tendering, acted as a sufficient warning to Bondholders and put them on notice that they should investigate the publicly available information before deciding whether to tender. Further, the Tender Offer was open from January 28, 1999 through March 3, 1999. This time period provided sufficient time for Plaintiff to investigate the market prices of the Bonds and is not such a short time period that it required Plaintiff to cross the street without looking both ways.

Lastly, Plaintiff argues that the Tender Offer was misleading in that it offered to purchase "up to 2%" of the Bonds. Plaintiff tendered over 3.5% of the Bonds, for which Defendant compensated Plaintiff and which tender Defendant considered as acceptance of its Tender Offer, thus resulting in a binding contract. Plaintiff argues that it was pressured to tender quickly because the Tender Offer stated that the offer was on a "first come, first buy" basis, the offer was open for a limited time, and up to 2% would be purchased. Even assuming that these statements were misleading and caused Plaintiff to feel pressure to tender quickly, the evidence clearly demonstrates that Ontario Teachers was not misled. First, they voluntarily tendered over 3.5%, showing that they were not misled into thinking that only 2% would be purchased. Indeed,

Plaintiff acted with the expectation that they would, and did, receive payment for the full amount of shares tendered. Second, the language of the Tender Offer did not induce Ontario Teachers to tender as quickly as possible, demonstrated by the fact that they waited until March 2, 1999 - the penultimate day of the Tender Offer - to tender their shares. Third, Plaintiff argues that its tender of over 3.5% of the Bonds amounted to a counteroffer, which had to be accepted by Defendant. This was not the case, here. Plaintiff, in its opposition papers, argues that Defendant offered to purchase "only" up to 2% of the outstanding Bonds, however, the word "only" does not appear in the Tender Offer. The addition of that one word dramatically changes the meaning of the Tender Offer. Further, Plaintiff relies on the bolded title of the Tender Offer, ignoring the text of the very first page of the Tender Offer materials, which clearly stated that "IG Holdings, Inc. may purchase or sell additional bonds at any point in the future at prices which may differ from the price offered herein." Tender Offer, Shore Affirmation, Exhibit A at 1. This is not the case where Defendant expressly limited the number of percentage of bonds it would purchase. See Kroeze v. Chloride Group Limited, 572 F.2d 1099, 1102 (5th Cir. 1978) (discussing tender offer which stated that "[i]n no event will Chloride purchase more than 1,316,500 shares of Connrex Stock pursuant to this Offer and any extension or extension thereof."). Rather, the Tender Offer was clearly not limited to 2%, as Defendant explicitly left open the possibility that it would purchase additional Bonds. Plaintiff took advantage of this open door and voluntarily tendered over 3.5%. It cannot now refute the existence of this opportunity of which it took advantage.

Further, tender offers are generally not invitations for offers. Kroeze, 572 F.2d at 1104. It is common practice that tender offers are "accepted" when a party commits himself or herself to tendering his or her shares. When this happens, the shares are deemed transferred, the tender offer accepted, and a contract formed."[W]hether called an 'offer to purchase' or an 'invitation to

tenders,' it is the purchaser who is actually making the offer and not the shareholder and a binding contract is created when the shareholder tenders his securities in accordance with the terms of the offer." Id. As the Court has held that Plaintiff's acceptance did not contain a counteroffer, and as Plaintiff tendered its Bonds in accordance with the terms of the Tender Offer, a binding contract was formed.

Even assuming that Plaintiff's purported acceptance was a counteroffer, such counteroffer was clearly accepted by Defendant and all shares were paid for in accordance with the Tender Offer. Importantly, it is evident that Plaintiff's intent was to accept the offer, as demonstrated in the March 3, 1999 letter. Intent to contract forms the foundation of contract law, and a clear an unequivocal intent to contract can be demonstrated by circumstances. Parella v. Retirement Board of the Rhode Island Employees' Retirement System, 173 F.3d 46, 61 (1st Cir. 1999). By its actions and by its agent's letter of March 3, 1999, Plaintiff demonstrated a clear intent to contract. That Plaintiff later determined that its decision was a bad one does not change that fact.

In a letter to the Court, Plaintiff has brought a recently issued SEC Release, entitled "Commission Guidance on Mini-Tender Offers and Limited Partnership Tender Offers," (the "Release") to the Court's attention.[2] In pertinent part, the Release, effective as of July 31, 2000,

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[2]Upon a motion to dismiss where materials outside the pleadings are offered, a district court should adhere strictly to the language of Rule 12(b)(6). Fed. R. Civ. P. 12(b)(6) (Advisory Committee Notes). Rule 12(b)(6) gives district courts two options when matters outside the pleadings are presented in response to a 12(b)(6) motion: (1) the court may exclude the additional material and decide the motion on the complaint alone; or (2) it may convert the motion to dismiss to a motion for summary judgment under Federal Rule of Civil Procedure 56 ("Rule 56") and give the parties an opportunity to present supporting material for such motion for summary judgment. Kopec v. Coughlin III., 922 F.2d 152, 154 (1991) (citing 5 C. Wright & A. Miller, Federal Practice and Procedure § 1366 (1969 & Supp. 1986)). See Fed. R. Civ. P. 10(c) ("A copy of any written instrument which is an exhibit to a pleading is a part thereof for all purposes."). Here, both parties submitted letters to the Court regarding the Release and neither party objected to the Court's authority to consider the Release. To the extent that the Release is

states that the Commission

> believe[s] security holders need better and clearer disclosure in mini-tender offers. To avoid "fraudulent, deceptive or manipulative practices" within the meaning of Section 14(e), we recommend that bidders in mini-tender offers consider the following issues in crafting disclosures in the tender offer documents that are provided to security holders.
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> > **Offer Price:** Price information is material to security holders. Because tender offers typically are made at prices that are at a premium to market, investors could reasonably assume that a mini-tender offer also includes a premium. Bidders should disclose clearly if the offer price is below the market price.
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> If the price offered is below the market price when the offer commences, the disclosure should clearly explain this prominently in the document. Also, the explanation should include the market price (or the bid and ask prices) on the day of commencement, or the most recent practicable date. . . .

Release, at 5. SEC Releases do not have the force of law, rather, they are recommendations as to how parties can fulfill their obligations under the securities laws and indicate the direction in which the SEC is moving on certain issues. As articulated in the Release, "[t]his interpretive guidance is intended to help bidders, subject companies and others participating in tender offers meet their obligations under the applicable statutes and rules, including the antifraud provisions." Release at 1. Thus, the language of the Release itself demonstrates that it merely provides guidance and is not binding authority.

The Court does not consider the Release as relevant to the case at bar for a number of reasons. First and as already stated, it does not state binding law, rather, merely states the Commission's recommendations and interpretation of the law. Second, the Release became effective on July 31, 2000 – approximately fifteen months after the date of this cause of action.

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relevant to the parties' legal obligations, the Court has considered it, as it would other research material, in preparation for deciding this motion. To the extent that the parties have made legal arguments in their letters, the Court has not considered them in its decision. Further, the Court has not considered the articles attached to the affirmation of Jennifer L. Kroman, dated August 23, 1998, as the articles are neither mentioned in, nor attached to the pleadings.

The SEC's position, as stated in the Release, was not published at the time the Tender Offer was made, therefore, Defendant cannot be assumed to have knows the Commission's position on the issues addressed. Lastly, the Release, in part, concerns the protection of those who might not have access to market information, might be easily misled due to their lack of information or sophistication, or to correct unfair imbalances in the ability to obtain market information. Even in light of the Commission's suggestions in the Release, the Court finds that the Defendant's warning that the price offered may not represent the fair market value of the Bonds, that the price was determined at the sole discretion of Defendant, and that bondholders should consult a financial planner or tax accountant before deciding to tender provided sufficient warning and put potential sellers on notice that it would be prudent to investigate.

For the reasons stated above, Plaintiff cannot show material false representation, reasonable reliance, or intent to mislead. The failure to show any one of the required elements will result in a failure of the cause of action and the granting of a motion to dismiss. As Plaintiff cannot state a claim for fraud or fraudulent inducement, Defendant's motion to dismiss such claims is granted and Plaintiff's claims of fraud and fraudulent inducement are dismissed with prejudice.[3]

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[3]The Court is concerned with Plaintiff's allegation that the SEC has already taken measures specifically directed at Defendant, "requesting, for example, that IG Holdings include a 30-day price range when making a below-market mini-tender offer" and further alleging that a principal of IG Holdings stated on January 28, 1999 that IG Holdings was complying with the SEC's request. Complaint ¶ 12. The Court notes that Plaintiff does not cite anything in support of this factual allegation. Further, in its Memorandum in Support of Its Motion to Dismiss, Defendant points out that Plaintiff was not a party to any such agreement and does not allege that it relied on such agreement when tendering the Bonds. Additionally, Defendant states that the agreement to which Plaintiff refers applies exclusively to stocks, rather than to bonds, noting that the courts have recognized that there is a much greater risk associated with equity investments as compared with debt investments. Defendant's Memorandum at 5 (citations omitted). In accordance with the provisions of Rule 12(b)(6), the Court did not consider additional materials

B. Conversion

Plaintiff's first claim for relief is for conversion. In order to state a claim for conversion, Plaintiff must allege that Defendant wrongfully interfered with Plaintiff's dominion over, rights in, or possession of property though a wrongful act or withholding, such that is generally considered inconsistent with Plaintiff's dominion or ownership. In re Chateaugay Corporation, 10 F.3d 944, 957 (2d Cir. 1993). Wrongful intent is not an element of a claim for conversion. Lopresti v. Terwillinger, 126 F.3d 34, 42 (2d Cir. 1997).

Plaintiff voluntarily relinquished its ownership and possession of the Bonds to Defendant when it tendered its Bonds pursuant to and as directed by the Tender Offer. Plaintiff contacted State Street and gave directions to tender all of its shares in response to the Tender Offer. State Street followed through on those instructions and transmitted Plaintiff's tender of the Bonds, for which Defendant promptly paid. There was no wrongful act which resulted in conversion. Furthermore, there was no wrongful withholding of Plaintiff's property which resulted in

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in preparation for this motion. However, the Court is in possession of a letter from Plaintiff's counsel, dated September 28, 1999, to which is attached an ORDER INSTITUTING PROCEEDINGS PURSUANT TO SECTION 21C OF THE SECURITIES EXCHANGE ACT OF 1934, MAKING FINDINGS, AND IMPOSING A CEASE-AND-DESIST ORDER ("SEC Order"). Such SEC Order was the result of an SEC Administrative Proceeding, which ultimately found that Defendant violated Section 14(e) of the Exchange Act because the means used to disseminate its below market mini-tender offers resulted in some shareholders not receiving material information about the offers, including the calculation of the final price, the inability of shareholders to withdraw their tenders and the warning that the offering price might not reflect the market price. Although this SEC Order has no bearing on the case at bar, the Court notes that the Tender Offer that is the subject of this case did inform bondholders that they could not withdraw their tenders, did inform bondholders of the final calculations of the offer price, and did issue the warning that the offering price might not reflect the market price. Even if such SEC Order were included in the pleadings, as IG Holdings appeared to have complied with such SEC Order. Thus, the Court's decision would not be affected by the SEC Order.

conversion. Plaintiff knew that there were no withdrawal rights once the Bonds were tendered in accordance with the terms of the Tender Offer. This is confirmed clearly in the letter addressed to IG Holdings from Kenneth C. Largess of the State Street Corporation, which stated that Plaintiff changed its mind and would no longer like to have its shares tendered, acknowledging that the electronic tender had already been made and a binding contract had been formed. It is standard tender offer practice that tender via electronic means signals acceptance of the tender offer, indicates an intent to be bound and forms a binding contract. As Plaintiff admittedly did not have the right to repossess the Bonds and as Defendant had a contractual right to possess the Bonds, Defendant did not wrongfully withhold them from Plaintiff.

Because there was no wrongful act or withholding of Plaintiff's property, Plaintiff cannot state a claim for conversion. Accordingly, Plaintiff's first claim for relief for conversion is dismissed with prejudice. Because the Court has held that a valid contract was formed and has dismissed Plaintiff's Complaint in its entirety, it does not have to reach the issue of whether Defendant was a protected purchase under the Uniform Commercial Code, Section 8-302(a).

IV. Conclusion

For the above reasons and consistent with this opinion, Defendant's Motion to Dismiss the Plaintiff's Complaint is GRANTED. Plaintiff's claim of conversion is DISMISSED WITH PREJUDICE. Plaintiff's claims of fraud and fraudulent inducement are DISMISSED WITH PREJUDICE.

New York, New York
Dated: August 28, 2000

SO ORDERED

Richard Conway Casey, U.S.D.J.