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Firm Wins Key Ruling for EveMeta in Breach-of-Contract Case

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November 5, 2018 — In a key ruling, Hughes Hubbard defeated a motion to dismiss a breach-of-contract lawsuit on behalf of EveMeta, a Marina del Rey, Calif. video-encoding company.

On Oct. 4, New York Supreme Court Justice Eileen Bransten rejected the majority of arguments by Buffalo-based technology development company Synacor Inc. and technology consulting firm Atos Convergence Creators Corp. (formerly a subsidiary of Siemens), a California-based provider of advanced over-the-top (OTT) services. In her ruling, Justice Bransten denied defendants' motion to dismiss claims for breach of contract and tortious interference.

EveMeta filed suit against its former partners in August 2017 after they cut EveMeta out of their business arrangement to sell Atos' OTT platform. Over-the-top is a tech industry term referring to video, TV and other services provided over the Internet rather than via a service provider's own dedicated, managed IPTV network.

The three companies announced their strategic partnership in July 2015. As part of the deal, EveMeta entered into an agreement with each company: a software distribution agreement with Atos that allowed EveMeta to license the OTT platform to Synacor while EveMeta agreed to pay a licensing fee to Atos; and a master services agreement with Synacor that set a price that Synacor would pay EveMeta for its role. Taken together, EveMeta would profit from the two agreements only if Synacor successfully sold the OTT solution to its clients, which included cable companies and consumer electronics companies, and the revenue of those sales exceeded the licensing fee.

During negotiations to extend the two agreements, Atos allegedly breached a confidentiality clause in the software distribution agreement by revealing to Synacor the nature of Atos' business relationship with EveMeta. As a result, Synacor attempted to renegotiate the pricing issue with EveMeta. At the same time, Atos and Synacor allegedly began discussing a direct deal that would cut EveMeta out.

In February 2016, Atos informed EveMeta that it had defaulted on its contractual provisions by failing to pay a \$300,000 "beta phase" fee due months earlier. But EveMeta didn't pay that fee because, around the same time, it

had agreed to Synacor's request to extend the beta phase for another two weeks. EveMeta scheduled a conference call among the three parties to discuss the next steps, but no one else joined the meeting; the following business day, EveMeta announced that the master services agreement had moved to the commercial phase and invoiced Synacor \$250,000.

Atos and Synacor responded by blocking EveMeta's participation in the project. During a conference call in March 2016, Atos and Synacor informed EveMeta that they intended to work with each other directly. Synacor terminated its agreement with EveMeta the following month; Atos ended its agreement with EveMeta in May 2016.

EveMeta's amended complaint against both companies alleges various fraud and breach-of-contract claims. Synacor and Atos sought dismissal, arguing that EveMeta failed to show it suffered damages as a result of being cut out of the partnership. But Justice Bransten rejected that argument and only dismissed EveMeta's fraud claims, finding that they were duplicative.

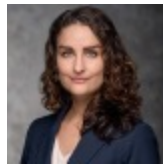
HHR also prevailed on a motion to dismiss in a parallel California state court proceeding against Atos' Austrian parent entity. In June 2018, the California court denied the motion to dismiss claims for lack of personal jurisdiction and failure to state a claim for tortious interference and punitive damages.

Hagit Elul, Fara Tabatabai and Elizabeth Zhou are working on this matter.

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