



**IN THE SUPREME COURT OF THE STATE OF DELAWARE**

YATRA ONLINE INC., )  
)  
Plaintiff Below, Appellant, )  
)  
v. )  
)  
EBIX, INC., EBIXCASH TRAVELS, INC., )  
REGIONS BANK, BMO HARRIS BANK )  
N.A., BBVA USA, FIFTH THIRD BANK, )  
NATIONAL ASSOCIATION, KEYBANK )  
NATIONAL ASSOCIATION, SILICON )  
VALLEY BANK, CADENCE BANK, N.A., )  
and TRUSTMARK NATIONAL BANK, )  
)  
Defendants Below, Appellees. )  
)

No. 294, 2021  
Court Below:  
Court of Chancery  
C.A. No. 2020-0440-JRS

**ANSWERING BRIEF OF APPELLEES REGIONS BANK, BMO HARRIS  
BANK N.A., BBVA USA, FIFTH THIRD BANK, NATIONAL  
ASSOCIATION, KEYBANK NATIONAL ASSOCIATION, SILICON  
VALLEY BANK, CADENCE BANK, N.A., AND TRUSTMARK NATIONAL  
BANK**

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Dated: December 2, 2021

# TABLE OF CONTENTS

	Page
NATURE OF PROCEEDINGS .....	1
SUMMARY OF ARGUMENT .....	3
STATEMENT OF FACTS.....	7
I.    The Credit Agreement and the Merger Agreement. ....	7
II.   The Put Right and the Form S-4.....	7
III.  The Lenders Execute the Ninth Amendment to the Credit Agreement. ....	8
IV.  Ebix Informs Yatra that It Cannot Issue the Put Right, and the Parties Renegotiate the Merger. ....	9
V.    The Lenders and Ebix Execute the Tenth Amendment to the Credit Agreement. ....	10
VI.  Yatra and Ebix’s Renegotiations Fail, and Yatra Terminates the Merger Agreement and Files Suit. ....	11
ARGUMENT .....	12
I.    THE TRIAL COURT DID NOT ERR IN DISMISSING YATRA’S TORTIOUS INTERFERENCE CLAIM FOR FAILURE TO STATE A CLAIM. ....	12
A.    Question Presented.....	12
B.    Scope of Review .....	12
C.    Merits of Argument.....	13
1.    The trial court did not err in concluding that Yatra failed to adequately plead the third and fifth elements of its tortious interference claim.....	13
2.    The trial court did not conflate the elements of a fraud claim with the elements of a tortious interference claim. ....	15
3.    Yatra’s pleading belies its new argument that the Lenders caused Yatra to lose the ability to sue Ebix for specific performance to cause Ebix to clear the SEC’s comment letters.....	16

**TABLE OF CONTENTS**  
(continued)

	<b>Page</b>
4. Yatra fails to sufficiently allege the third and fifth elements of its tortious interference claim for the additional reason that Yatra alleges Ebix repudiated its obligation to issue the Put Right before the Tenth Amendment. ....	18
CONCLUSION .....	22

## TABLE OF AUTHORITIES

	<b>Page(s)</b>
<b>Cases</b>	
<i>Bhole, Inc. v. Shore Invs., Inc.</i> , 67 A.3d 444 (Del. 2013) .....	3, 13, 15, 16, 20
<i>Draper v. Westwood Dev. Partners, LLC</i> , 2010 WL 2432896 (Del. Ch. June 3, 2010).....	17
<i>eCommerce Indus. v. MWA Intelligence, Inc.</i> , 2013 WL 5621678 (Del. Ch. Sept. 30, 2013).....	14
<i>Georgetown Crossing LLC v. Ruhl</i> , 2006 WL 3720134 (Del. Ch. Dec. 5, 2006).....	17
<i>In re GM (Hughes) S’holder Litig.</i> , 897 A.2d 162 (Del. 2006) .....	14
<i>Greenfield v. Miles</i> , 211 A.3d 1087 (Del. 2019) .....	12
<i>Malpiede v. Townson</i> , 780 A.2d 1075 (Del. 2001) .....	12, 18
<i>Nemec v. Shrader</i> , 991 A.2d 1120 (Del. 2010) .....	12
<i>Estate of Osborn v. Kemp</i> , 991 A.2d 1153 (Del. 2010) .....	17
<i>RBC Capital Mkts., LLC v. Jervis</i> , 129 A.3d 816 (Del. 2015) .....	18

## **NATURE OF PROCEEDINGS**

Plaintiff-Appellant Yatra Online, Inc. (“Yatra”) appeals the Court of Chancery’s order granting Defendants’ motions to dismiss pursuant to Court of Chancery Rule 12(b)(6).

This action arises out of a failed merger between Yatra and Defendant-Appellees Ebix, Inc. (“Ebix”) and EbixCash Travels, Inc. (“EbixCash”). On June 5, 2020, Yatra terminated its merger agreement with Ebix and EbixCash (the “Merger Agreement”) and filed this lawsuit against Ebix and EbixCash. Thereafter, Yatra learned, for the first time, that on May 7, 2020, the Lenders<sup>1</sup> executed a tenth amendment (the “Tenth Amendment”) to their pre-existing credit agreement with Ebix (the “Credit Agreement”). Yatra filed its amended complaint (the “Amended Complaint”) on September 25, 2020, joining the Lenders as defendants. Yatra brings one claim against the Lenders for tortious interference with contract, alleging that the Lenders tortiously interfered with the Merger Agreement by executing the Tenth Amendment.

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<sup>1</sup> The “Lenders” include Defendant-Appellees Regions Bank, BMO Harris Bank N.A., BBVA USA, Fifth Third Bank, National Association, KeyBank National Association, Silicon Valley Bank, Cadence Bank, N.A., and Trustmark National Bank.

BBVA USA was merged with and into PNC Bank, National Association effective October 8, 2021 at 11:59 p.m. EDT.

Cadence Bancorporation and its subsidiary Cadence Bank, N.A. merged into BancorpSouth Bank on October 29, 2021, and BancorpSouth Bank changed its name to Cadence Bank.

The trial court dismissed Yatra's tortious interference claim, concluding that Yatra failed to sufficiently allege two elements of its claim: that the Lenders' conduct was a significant factor in causing Ebix's breach of the Merger Agreement, and that the Lenders' conduct caused Yatra's injury. Yatra's own allegations negate the third and fifth elements of its tortious interference claim and, thus, this Court should affirm the trial court's order granting the Lenders' motion to dismiss.

## SUMMARY OF ARGUMENT

1. Denied. According to Yatra, the trial court erred in concluding that Yatra failed to plead the third and fifth elements of its claim against the Lenders for tortious interference with contract.

2. A claim for tortious interference with contract requires: “(1) a contract, (2) about which defendant knew, and (3) an intentional act that is a significant factor in causing the breach of such contract, (4) without justification, (5) which causes injury.” *Bhole, Inc. v. Shore Invs., Inc.*, 67 A.3d 444, 453 (Del. 2013) (emphasis omitted).

3. Yatra alleges that the Lenders tortiously interfered with the Merger Agreement between Yatra, Ebix, and EbixCash by executing the Tenth Amendment. Under the Merger Agreement, Yatra was to receive Ebix convertible preferred stock accompanied by a put right (the “Put Right”). Yatra alleges that under the Tenth Amendment, Ebix could not issue the stock accompanied by the Put Right without defaulting under the Credit Agreement. Yatra thus contends that by executing the Tenth Amendment, the Lenders prevented Ebix from fulfilling its obligation under the Merger Agreement to issue the stock accompanied by the Put Right. Yatra alleges that the Lenders’ conduct caused Yatra to lose the value of the Put Right and the ability to seek specific performance of Ebix’s obligations.

4. The trial court correctly concluded that Yatra’s own allegations negate



the third and fifth elements of its claim.

5. Yatra alleges that for Ebix to be able to issue the convertible preferred stock accompanied by the Put Right, Ebix needed to file, and the SEC needed to declare effective, a Form S-4. (A183 ¶ 49.) Yatra expressly alleges, however, that the SEC never declared the Form S-4 effective, and Yatra does not allege that the Lenders' conduct played any role in the SEC never declaring the Form S-4 effective. (A193 ¶ 84; A195 ¶ 91; A205 ¶ 126.) Accordingly, even if the Lenders had never executed the Tenth Amendment, Ebix could not have issued, and Yatra could not have received, the stock and accompanying Put Right—nor could Yatra have specifically enforced Ebix's obligation to issue the stock accompanied by the Put Right. Thus, the trial court correctly held that Yatra failed to sufficiently allege (a) that the Lenders' execution of the Tenth Amendment was a significant factor in causing Ebix's breach of its obligation to issue the Put Right (the third element), and (b) that the Lenders' execution of the Tenth Amendment caused Yatra's injury (the fifth element)—the loss of the Put Right or the ability to seek specific performance thereof.

6. Yatra contends in its "Issue 5" that the trial court erred in holding that Yatra failed to allege the third element of its tortious interference claim. (Appellant's Opening Br. 6.) Yatra erroneously claims that the trial court conflated the element of a fraud claim, that the misrepresentation caused the loss suffered, with

the third element of a tortious interference claim—that the interferer’s conduct was a significant factor in causing the breach. (*Id.*)

7. Yatra overlooks that the trial court held that Yatra failed to plead both that the Lenders’ conduct was a significant factor in causing the breach (the third element) and that the Lenders’ conduct caused Yatra’s injury (the fifth element). (Op. 4, 43–44.) Yatra’s argument that a tortious interference claim does not require causal injury is contrary to well-settled Delaware law, and the trial court correctly held that Yatra’s pleading failed to allege such causal injury.

8. Denied. Yatra further contends that even if it must allege causal injury, the trial court erred in dismissing its tortious interference claim because notwithstanding that the SEC never declared the Form S-4 effective, Yatra could have sued Ebix for specific performance of its obligation to clear the SEC’s outstanding comment letters, which Yatra contends would have resulted in the Form S-4 being declared effective. (Appellant’s Opening Br. 6–7.) Yatra thus argues that it adequately plead that the Lenders’ conduct caused Yatra injury.

9. Yatra’s argument is again negated by its own allegations. Yatra expressly alleges that it did not know of the Tenth Amendment until after it terminated the Merger Agreement and filed this lawsuit against Ebix and EbixCash. (A168 ¶¶ 3–4; A216 ¶ 158; A222 ¶ 174.) By terminating the Merger Agreement, Yatra foreclosed its ability to obtain specific performance of the Merger Agreement.

And because Yatra alleges it terminated the agreement before Yatra even knew about the Tenth Amendment, Yatra's allegations negate its argument that the Lenders' execution of the Tenth Amendment caused Yatra's loss of the specific performance remedy.

10. Further, dismissal of Yatra's tortious interference claim was proper for the additional reason that Yatra alleges that Ebix repudiated its obligation to issue the Put Right well before the Tenth Amendment. These allegations likewise negate the essential elements that the Lenders' execution of the Tenth Amendment was a significant factor in causing Ebix's breach and caused Yatra's injury.

## STATEMENT OF FACTS

### **I. The Credit Agreement and the Merger Agreement.**

On August 5, 2014, Ebix and several parties, including the Lenders, entered into a Credit Agreement under which the Lenders agreed to provide Ebix with revolving credit and term loan facilities. (A288–424.)

In February 2019, Yatra and Ebix began negotiating a potential merger. (A177 ¶ 33.) Those negotiations culminated in a Merger Agreement dated July 16, 2019, pursuant to which EbixCash would merge with and into Yatra, and Yatra would survive the merger as a direct, wholly-owned subsidiary of Ebix. (A179 ¶ 39.)

### **II. The Put Right and the Form S-4.**

Pursuant to the Merger Agreement, at closing, each share of Yatra would be converted into Ebix convertible preferred stock at a fixed exchange ratio. (A179 ¶ 40.) The Put Right would accompany the convertible preferred stock to allow Yatra’s stockholders who had not exercised the conversion feature of the stock to have the stock redeemed by Ebix at a fixed price during the twenty-fifth month after closing of the merger. (*Id.*) The approximate value of the Put Right was \$257 million. (A179 ¶ 41.)

The Merger Agreement also required Ebix to file a Form S-4 with the SEC. (A182 ¶ 48.) The SEC declaring the Form S-4 effective was a closing condition and a prerequisite for Yatra to hold its stockholder meeting to approve the merger. (A183

¶ 49.) In addition, for Ebix to issue the convertible preferred stock accompanied by the Put Right, the SEC had to declare the Form S-4 effective. (*Id.*) Absent an effective Form S-4, the merger could not close and Ebix would not have the currency to issue the convertible preferred stock accompanied by the Put Right. (*Id.*) Although Ebix filed the Form S-4, the SEC never declared the Form S-4 effective. (A193 ¶ 84; A195 ¶ 91; A205 ¶ 126.) Yatra does not allege that the Lenders' conduct played any role in the Form S-4 not being declared effective.

### **III. The Lenders Execute the Ninth Amendment to the Credit Agreement.**

The Credit Agreement contains financial covenants, one of which prohibits Ebix from incurring “Indebtedness,” as defined in the Credit Agreement. (A215 ¶ 155; A389.) Yatra alleges that the Lenders executed the ninth amendment (the “Ninth Amendment”) to the Credit Agreement to allow the merger to close without Ebix incurring “Indebtedness” under the Credit Agreement. (A214 ¶ 153; A216 ¶ 156.) The Ninth Amendment, dated September 27, 2019, added the defined term “Yatra Disqualified Equity Interests,” which included issuance of the convertible preferred stock accompanied by the Put Right. (A214–15 ¶¶ 152, 154.) The Ninth Amendment also amended the definition of “Indebtedness” to exclude therefrom “Yatra Disqualified Equity Interests” in an amount up to \$260 million. (A215 ¶ 155.) The Ninth Amendment was executed after Yatra and Ebix had already entered into the Merger Agreement. (A214 ¶ 152.) Yatra alleges that as a result of

the Ninth Amendment, Ebix’s issuance of the Put Right would not constitute incurring “Indebtedness” in violation of the Credit Agreement. (A215 ¶ 155.)

#### **IV. Ebix Informs Yatra that It Cannot Issue the Put Right, and the Parties Renegotiate the Merger.**

Beginning in November 2019 and continuing through at least the second quarter of 2020, the price of Ebix’s stock plummeted, causing the value of the Put Right to balloon as a percentage of Ebix’s market capitalization. (A179 ¶ 41; A191 ¶ 79; A202 ¶ 113.) These factors forced Ebix to reconsider the terms of the merger beginning in November 2019. (A191 ¶ 79.)

Through the first and second quarters of 2020, the value of the Put Right continued to balloon compared to Ebix’s market capitalization as the S&P 500 Index plummeted due to the COVID-19 global pandemic. (A167 ¶ 2; A179 ¶ 41; A202 ¶ 113.) In late March 2020, Ebix proposed a renegotiation of the Merger Agreement. (A206 ¶ 127.) By that time, Ebix had decided that it did not want to issue the Put Right because its value had become such a large percentage of Ebix’s market capitalization. (A206 ¶ 128.) Yatra agreed to renegotiate. (A206–07 ¶¶ 129–30.) As part of those renegotiations, on April 4, 2020, Ebix’s CEO told Yatra’s board “that the deal reflected in the Merger Agreement, including the Put Right, could not happen.” (A208 ¶ 133.)

Over the next two months, Yatra and Ebix engaged in extensive renegotiations of the merger and, specifically, the economic consideration to replace the Put Right.

(A209–12 ¶¶ 136–40, 143–47; A222–24 ¶¶ 176, 180; A226–27 ¶¶ 186, 190–91.)

On May 3, 2020, Ebix sent Yatra a term sheet outlining a renegotiated deal pursuant to which Ebix would grant Yatra a stock dividend “in exchange for the elimination of the Put Right.” (A211 ¶ 144.) That same day, the CEOs of Yatra and Ebix discussed the term sheet and agreed to reduce the total number of shares issued in the stock dividend and to offset that reduction with equivalent economic consideration in a different form in an effort to structure the deal to account “for the demise of the Put Right.” (A212 ¶ 146.)

#### **V. The Lenders and Ebix Execute the Tenth Amendment to the Credit Agreement.**

On May 7, 2020, the Lenders executed the Tenth Amendment to the Credit Agreement. (A216 ¶ 157; A426–32.) The Tenth Amendment removed the Put Right from the definition of “Yatra Disqualified Equity Interests.” (A218 ¶ 163.) Yatra alleges that because the Put Right was removed from “Yatra Disqualified Equity Interests,” the Put Right was no longer excluded from “Indebtedness.” (A218 ¶ 164.) Yatra thus alleges that if Ebix were to issue the Put Right to Yatra, it would violate the Credit Agreement’s prohibition on incurring “Indebtedness,” which Yatra contends would allow the Lenders to accelerate Ebix’s debt and foreclose on its collateral. (A219–20 ¶¶ 165–68.) Yatra, however, did not learn of the Tenth Amendment until after it terminated the Merger Agreement and after it filed this lawsuit. (A168–69 ¶¶ 3–4; A216 ¶ 158; A222 ¶ 174.)

## **VI. Yatra and Ebix’s Renegotiations Fail, and Yatra Terminates the Merger Agreement and Files Suit.**

Yatra and Ebix continued to exchange revised merger terms through the end of May 2020, which included the elimination of the Put Right. (A222 ¶ 176; A226 ¶ 186; A227–28 ¶ 190.) Ultimately, their negotiations broke down, and Yatra declared material breaches of the Merger Agreement and terminated the agreement on June 5, 2020. (A227–29 ¶¶ 190, 193.)

That same day, Yatra filed its original complaint against Ebix and EbixCash. (A024.) On August 9, 2020, Ebix filed its Form 10-Q for the fiscal period ended June 30, 2020, which included the Tenth Amendment as an exhibit thereto. (A168 ¶¶ 3–4; A222, ¶ 174.) At that time, Yatra first learned that Ebix and the Lenders had executed the Tenth Amendment to the Credit Agreement. (A168–69 ¶¶ 3–4; A216 ¶ 158; A222 ¶ 174.) Yatra filed its Amended Complaint on September 25, 2020, joining the Lenders as defendants. (A018.)



## ARGUMENT

### **I. THE TRIAL COURT DID NOT ERR IN DISMISSING YATRA’S TORTIOUS INTERFERENCE CLAIM FOR FAILURE TO STATE A CLAIM.**

#### **A. Question Presented**

Did the trial court err in dismissing Yatra’s claim against the Lenders for tortious interference with contract under Court of Chancery Rule 12(b)(6)? (A256; A454–55.)

#### **B. Scope of Review**

This Court reviews the trial court’s order granting a motion to dismiss *de novo*. *Greenfield v. Miles*, 211 A.3d 1087, 1096 (Del. 2019). To withstand a motion to dismiss, a plaintiff must allege sufficient facts that, if true, would entitle plaintiff to relief under a “reasonably conceivable set of circumstances.” *Id.* Courts must take all well-pleaded allegations of fact as true and draw all reasonable inferences from those facts in favor of the plaintiff. *Id.* Courts “do not, however, blindly accept conclusory allegations unsupported by specific facts, nor do [courts] draw unreasonable inferences in the plaintiffs’ favor.” *Nemec v. Shrader*, 991 A.2d 1120, 1125 (Del. 2010). In addition, it is well settled that “a claim may be dismissed if allegations in the complaint or in the exhibits incorporated into the complaint effectively negate the claim as a matter of law.” *Malpiede v. Townson*, 780 A.2d 1075, 1083 (Del. 2001).

### C. Merits of Argument

The trial court did not err in dismissing Yatra’s tortious interference claim. Under Delaware law, a claim for tortious interference with contract requires “(1) a contract, (2) about which defendant knew, and (3) an intentional act that is a significant factor in causing the breach of such contract, (4) without justification, (5) which causes injury.” *Bhole, Inc. v. Shore Invs., Inc.*, 67 A.3d 444, 453 (Del. 2013) (emphasis omitted). Yatra’s tortious interference claim fails as to the third and fifth elements—that is, Yatra fails to sufficiently allege that the Lenders’ conduct was a significant factor in causing Ebix’s breach of the Merger Agreement and that the Lenders’ conduct caused Yatra’s injury.

**1. The trial court did not err in concluding that Yatra failed to adequately plead the third and fifth elements of its tortious interference claim.**

Yatra alleges that the Lenders tortiously interfered with the Merger Agreement by executing the Tenth Amendment to the Credit Agreement. Specifically, Yatra alleges that by executing the Tenth Amendment, the Lenders prevented Ebix from fulfilling its obligation under the Merger Agreement to issue the convertible preferred stock accompanied by the Put Right, thereby causing Yatra to lose the Put Right and the remedy of specific performance of Ebix’s obligation to issue the stock and accompanying Put Right.

As the trial court noted, however, Yatra admits in its Amended Complaint that

the SEC needed to declare the Form S-4 effective to permit Ebix to issue the convertible preferred stock accompanied by the Put Right. (Op. 2, 14, 43; A183 ¶ 49.) Yatra expressly alleges that the SEC never declared the Form S-4 effective, and Yatra does not allege that the Lenders' conduct played any role in Ebix's delay surrounding the Form S-4 or the SEC never declaring the Form S-4 effective. (Op. 43; A193 ¶ 84; A195 ¶ 91; A205 ¶ 126.) Because the SEC never declared the Form S-4 effective, even if the Lenders had never executed the Tenth Amendment, Ebix could not have issued, and Yatra could not have received, the convertible preferred stock accompanied by the Put Right—nor could Yatra have specifically enforced Ebix's obligation to issue such consideration. Accordingly, the trial court correctly held that Yatra failed to adequately plead that the Lenders' execution of the Tenth Amendment was a significant factor in causing Ebix's breach of its obligation to issue the stock and accompanying Put Right (the third element) or that the Lenders' execution of the Tenth Amendment caused Yatra's injury (the fifth element)—the loss of the Put Right or specific performance thereof. *See In re GM (Hughes) S'holder Litig.*, 897 A.2d 162, 169 (Del. 2006) (“It is well established that a claim may be dismissed if allegations in the complaint . . . effectively negate the claim as a matter of law.”); *eCommerce Indus. v. MWA Intelligence, Inc.*, 2013 WL 5621678, at \*37 (Del. Ch. Sept. 30, 2013) (stating the elements of a claim for tortious interference with contract are “(1) a contract, (2) about which defendant knew, and

(3) an intentional act that is a significant factor in causing the breach of such contract, (4) without justification, (5) which causes injury”).

**2. The trial court did not conflate the elements of a fraud claim with the elements of a tortious interference claim.**

Yatra’s primary argument on appeal is that the trial court conflated the loss causation element of a fraud claim with the third element of a tortious interference claim—that the interferer’s conduct was a significant factor in causing the breach of contract. (Appellant’s Opening Br. 6, 46–48.) Yatra contends that while a fraud claim requires allegations that the misrepresentation caused the loss suffered, referred to as “loss causation,” a tortious interference claim merely requires allegations that the interferer’s conduct was a significant factor in causing the breach. (Appellant’s Opening Br. 46–48.)

Yatra’s argument is without merit and incorrectly assumes that causal injury is not an element of a tortious interference claim. In discussing Yatra’s fraud claim against Ebix, the trial court stated that Yatra must allege that its reliance on Ebix’s misrepresentation caused injury to Yatra, referring to this element as “loss causation.” (Op. 38–39 & n.135.) While a tortious interference claim requires that the interferer’s conduct was a significant factor in causing the breach of contract (the third element), it *also* requires that the interferer’s conduct caused injury to the plaintiff (the fifth element). *See Bhole*, 67 A.3d at 453 (stating the fifth element of a claim for tortious interference with contract is that the interferer’s intentional act

causes injury to the plaintiff). Thus, contrary to Yatra’s contention, “loss causation” is also an element of a tortious interference claim—that is, Yatra must allege that the Lenders’ intentional conduct caused injury to Yatra. *Id.* The trial court concluded not only that Yatra failed to sufficiently allege that the Lenders’ conduct was a significant factor in causing Ebix’s breach (the third element), (Op. 44), but also that Yatra failed to sufficiently allege that the Lenders’ conduct caused Yatra’s injury (the fifth element)—it did not conflate these elements. (Op. 4 (“Yatra has failed to plead reasonably conceivable loss causation for either fraud or tortious interference.”); Op. 43 (“Yatra’s contention that the Lender Defendants *caused its injury* (the loss of the Put Right) runs headlong into its allegations that [Ebix] could not have issued the Put Right in any event due to the SEC having never declared the S-4 effective.” (emphasis added)).) Accordingly, the trial court did not conflate the elements of fraud with the elements of tortious interference and correctly held that Yatra failed to plead that the Lenders’ conduct caused Yatra’s injury.

**3. Yatra’s pleading belies its new argument that the Lenders caused Yatra to lose the ability to sue Ebix for specific performance to cause Ebix to clear the SEC’s comment letters.**

Yatra nonetheless argues that even if it must allege causal injury to state a tortious interference claim, the trial court erred in concluding that Yatra failed to plead that the Lenders’ execution of the Tenth Amendment caused Yatra to lose the remedy of specific performance. (Appellant’s Opening Br. 48–49.) Yatra argues

for the first time on appeal that even though it could not have sued Ebix for specific performance of Ebix's obligation to issue the Put Right due to the SEC never declaring the Form S-4 effective, Yatra could have sued Ebix for specific performance to require Ebix to clear the SEC's outstanding comment letters, which Yatra contends would have led to the SEC declaring the Form S-4 effective. (Appellant's Opening Br. 5–6, 44–49.)

Yatra's argument that the Tenth Amendment caused it to lose the remedy of specific performance of *any* obligation under the Merger Agreement is belied by its express allegations that it did not even know about the Tenth Amendment until after it terminated the Merger Agreement and after it filed this lawsuit. (A168 ¶¶ 3–4; A216 ¶ 158; A222, ¶ 174.) By terminating the Merger Agreement, Yatra foreclosed its ability to obtain specific performance of the Merger Agreement. *See Draper v. Westwood Dev. Partners, LLC*, 2010 WL 2432896, at \*5 (Del. Ch. June 3, 2010) (“Since the Agreement has been terminated, however, no equitable right to specific performance exists.”); *Georgetown Crossing LLC v. Ruhl*, 2006 WL 3720134, at \*12 (Del. Ch. Dec. 5, 2006) (holding that specific performance was unavailable because the agreement had been validly terminated); *see also Estate of Osborn v. Kemp*, 991 A.2d 1153, 1158 (Del. 2010) (holding that a party seeking specific performance must establish that a valid contract exists and he is ready, willing, and able to perform thereunder). That Yatra terminated the agreement *before* Yatra even

knew of the Tenth Amendment shows that the Lenders' execution of the Tenth Amendment did not cause Yatra's loss of the remedy of specific performance. *See Malpiede*, 780 A.2d at 1083 (stating "a claim may be dismissed if allegations in the complaint or in the exhibits incorporated into the complaint effectively negate the claim as a matter of law"). Accordingly, the trial court did not err in concluding that Yatra failed to sufficiently allege that the Lenders' conduct caused Yatra's injury.<sup>2</sup>

**4. Yatra fails to sufficiently allege the third and fifth elements of its tortious interference claim for the additional reason that Yatra alleges Ebix repudiated its obligation to issue the Put Right before the Tenth Amendment.**

Although the trial court did not dismiss Yatra's tortious interference claim on this ground, dismissal was proper on the additional basis that Yatra alleges that Ebix repudiated its obligation to issue the Put Right before the Lenders executed the Tenth Amendment. Those allegations independently foreclose any causal connection between the Lenders' conduct, on the one hand, and Ebix's breach of its obligation

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<sup>2</sup> Contrary to Yatra's contention to the trial court, section 9.9(c) of the Merger Agreement does not allow a party to terminate the Merger Agreement and then file suit for specific performance. As the trial court found, section 9.9(c) "states simply that a party is not prevented from suing for specific performance before exercising its termination right. It would make no sense for a party to terminate the agreement, only to turn around and sue for specific performance, and Section 9.9(c) does not provide for that scenario." (Op. 27.) Moreover, section 8.2 makes clear that section 9.9 merely provides that a party may seek specific performance prior to terminating the agreement. (A576 ("The parties acknowledge and agree that nothing in this Section 8.2 shall be deemed to affect their right to specific performance under Section 9.9 prior to the valid termination of this Agreement.").)

to issue the Put Right and Yatra’s alleged injury, on the other. *RBC Capital Mkts., LLC v. Jervis*, 129 A.3d 816, 849 (Del. 2015) (“This Court may affirm on the basis of a different rationale than that which was articulated by the trial court, if the issue was fairly presented to the trial court.”).<sup>3</sup>

Yatra contends that by executing the Tenth Amendment to the Credit Agreement, the Lenders prevented Ebix from issuing the Put Right. Yatra alleges, however, that Ebix repudiated its obligation to issue the Put Right *before* the Lenders executed the Tenth Amendment. In particular, Yatra alleges that Ebix began reconsidering the terms of the merger in November 2019, (A191 ¶ 79), and by late March 2020, “Ebix had decided that it did not want to issue the Put Right” because its value had become such a large percentage of Ebix’s market capitalization, (A206 ¶ 128). Yatra further alleges that on April 4, 2020, Ebix’s CEO told Yatra “that the deal reflected in the Merger Agreement, including the Put Right, could not happen.” (A208 ¶ 133.) Yatra thus agreed to renegotiate, and Yatra and Ebix engaged in extensive renegotiations of the merger and, specifically, the economic consideration to replace the Put Right. (A206–07 ¶¶ 129–30; A209–13 ¶¶ 136–40, 143–48.)

On May 3, 2020, Ebix sent Yatra a term sheet for a renegotiated deal pursuant to which Ebix would grant Yatra a stock dividend “in exchange for the elimination

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<sup>3</sup> The Lenders made this same argument to the trial court and, thus, the issue was fairly presented to the trial court. (A282–86 & n.13–14; A1433–40.)



of the Put Right.” (A211 ¶ 144.) That same day, Yatra’s and Ebix’s CEOs discussed the term sheet and the parties agreed to reduce the total number of shares issued in the stock dividend and to offset that reduction with equivalent economic consideration in a different form to account “for the demise of the Put Right.” (A212 ¶ 146.)

In comparison, the Lenders did not execute the Tenth Amendment until May 7, 2020—*after* Ebix stated that it would not issue the Put Right and *after* Yatra agreed to renegotiate the merger consideration based on Ebix’s repudiation of the Put Right. (A216 ¶ 157.) Thus, Yatra’s allegations establish that Ebix told Yatra it would not fulfill its obligation to issue the Put Right *before* the Lenders executed the Tenth Amendment. Accordingly, the Tenth Amendment could not have been a significant factor in causing Ebix’s *prior* repudiation of its obligation to issue the Put Right. *See Bhole*, 67 A.3d at 453 (stating a tortious interference claim requires an act “that is a significant factor in causing the breach of such contract”).

Likewise, Yatra’s allegations that Ebix repudiated its obligation to issue the Put Right long before the Lenders executed the Tenth Amendment also demonstrate that Yatra would have been deprived of the Put Right even in the absence of the Tenth Amendment. Thus, the Tenth Amendment could not have caused Yatra’s injury (the loss of the Put Right).

Therefore, Yatra fails to sufficiently allege the third and fifth elements of its

tortious interference claim, and the trial court did not err in dismissing the claim.

**CONCLUSION**

For the foregoing reasons, this Court should affirm the trial court's order.

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**CERTIFICATE OF SERVICE**

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