UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

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LOCAL 851 OF THE INTERNATIONAL BROTHERHOOD OF TEAMSTERS, by its court-appointed Independent Supervisor and Union Trustee,

Plaintiff,

-against-

THYSSEN HANIEL LOGISTICS, INC., formerly known as AMERFORD INTERNATIONAL CORPORATION, THYSSEN HANIEL LOGISTIC GMBH and ANTHONY RAZZA,

Defendants.

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IN RE: LOCAL 851 OF THE INTERNATIONAL BROTHERHOOD OF TEAMSTERS, by its court-appointed Independent Supervisor and Union Trustee,

Petitioner,

-against-

GEORGE QUINLAN, RONALD GOLSTOCK, MARTIN ARONCHICK, the ATTORNEY GENERAL, State of New York, in his Official Capacity, and the DEPUTY ATTORNEY GENERAL, New York State Organized Crime Task Force, in his Official Capacity,

Respondents.

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LOCAL 851 OF THE INTERNATIONAL BROTHERHOOD OF TEAMSTERS, by its court-appointed Independent Supervisor,

Plaintiff,

-against-

MARTIN ARONCHICK,

Defendant.

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MEMORANDUM AND ORDER

No. 95-CV-5179 (FB)

Action I

Ancillary Proceeding

No. 02-CV-6250 (FB)

Action II

BLOCK, District Judge:

This consolidated action involves allegations leveled by plaintiff Local 851 of the International Brotherhood of Teamsters ("Local 851") that former New York Deputy Attorney General George Quinlan ("Quinlan"), former Director of the New York State Organized Crime Task Force ("OCTF") Ronald Goldstock ("Goldstock"), and former Attorney-In-Charge of Civil Enforcement for OCTF Martin Aronchick ("Aronchick") (collectively "respondents")[1] violated Local 851's due process rights by failing to comply with the requirements of the New York forfeiture law (CPLR Article 13-A). Pending before the Court is respondents' consolidated motion to dismiss both cases, pursuant to Fed. R. Civ. P. 12(b)(1) and 12(b)(6), on an assortment of grounds, including lack of standing and absolute and qualified immunity, and Local 851's motion for summary judgment in each case. For the reasons that follow, the Court grants the respondents' motion to dismiss on qualified immunity grounds.

BACKGROUND

These actions and the current motions follow extensive proceedings in the Eastern District of New York, the New York Court of Claims, and New York State criminal investigations arising out of corruption and racketeering activities involving Local 851, Amerford International Corporation ("Amerford") and the Luchese organized crime family, among other parties. In a prior opinion dismissing Local 851's claims raised in the

[1] Aronchick is both a respondent in the Ancillary Proceeding and the defendant in Action II. For simplicity's sake, he is included in the collective designation "respondents."

Ancillary Proceeding to Action I against government officials in their official capacity, Judge Nickerson[2] provided a detailed summary of the factual and procedural background of the case. *See Local 851 of the Int'l Bhd. of Teamsters v. Thyssen Haniel Logistics, Inc.*, 90 F. Supp. 2d 237, 239-42 (E.D.N.Y. 2000). The Court summarizes its salient aspects as follows.

I. Prior Proceedings Before Judge Nickerson

A. Criminal Investigation and Forfeiture Agreements

In December 1990, Amerford and its president and chief executive officer, Harold Niehenke ("Niehenke"), illegally terminated a number of employees, all of whom were members of Local 851, and shared the resulting cost savings with organized crime.[3] Anthony Razza ("Razza"), Local 851's secretary and treasurer at the time and a member of the Luchese crime family, participated in the scheme and used his position within the union to maintain labor peace following the terminations.

On June 30, 1993, following a criminal investigation by the New York Attorney General's office, Amerford and OCTF entered into a written agreement (the "Amerford Agreement") whereby OCTF agreed not to prosecute Amerford in exchange for Amerford's cooperation with the investigation, independent internal oversight at Amerford, and forfeited funds. Amerford Agreement at ¶ 6 (Am. Pet., Ex. A). Amerford

[2] Following the death of Judge Nickerson in January 2002, Action I and the Ancillary Proceeding were transferred to this Court.

[3] Amerford thereafter became known as Thyssen Haniel Logistics, Inc., the named defendant in Action I.

agreed to retain an Independent Private-Sector Inspector General ("IPSIG") for purposes of monitoring Amerford's business practices "and for identifying and determining the appropriate amount of restitution for past or present [Amerford] employees as a result of alleged improper labor activities and practices of [Amerford]." Amerford Agreement at ¶1(a).

> The parties further agreed that:
>
> > 3. [Amerford] will pay two and one-half million dollars ($2,500,000) to OCTF in settlement of its forfeiture liability under Article 13-A of the Civil Practice Law and Rules ("CPLR"), at the time this agreement is executed. . . . All settlement payments to OCTF will be distributed in accordance with the provisions of Article 13-A of the CPLR.
> >
> > 4. [Amerford] agrees that it will enter into a consent decree in a form to be prepared by OCTF within two weeks following the conclusion of the IPSIG's employment and final report providing for the distribution of the settlement amounts in accordance with the provisions of Article 13-A of the CPLR and the restitution determinations of the IPSIG as approved by OCTF.
> >
> > 5. [Amerford] will waive the criminal conviction requirement for its forfeiture liability under Article 13-A of the CPLR. Notwithstanding this waiver, if Harald Niehenke . . . is convicted of any felony, related to alleged improper labor activities and practices within one year of the date of execution of this agreement, [Amerford] will plead guilty within six months thereafter to any appropriate Class E felony superior court information . . . .

Id. at ¶¶ 3-5. Goldstock executed the agreement on behalf of OCTF; Aronchick was listed therein as the OCTF representative to whom notices should be sent.

On June 30, 1993, Amerford paid $2,500,000 in escrow to OCTF (the

"Amerford Fund"). Under the direction of Goldstock and Aronchick, the following distributions were made from the escrow account: on June 30, 1993, OCTF distributed $1,149,337.53 from the Amerford Fund to itself to cover budget deficits; in October 1993, OCTF distributed $6,562 to itself and $544,000 to the Office of Alcoholism and Substance Abuse Services ("OASAS"), and in March 1994, OCTF distributed $209,440 of the fund to itself and $98,560 to OASAS. In total, OCTF received $1,365,340 of the fund and OASAS received $642,560.

Between March and November 1994, the IPSIG identified the employees who were entitled to restitution, determined the amount of their losses, and oversaw, together with OCTF, the distribution to them of approximately $500,000 from what remained of the Amerford Fund. Although the Amerford Agreement spoke only of compensating "employees," Aronchick authorized an additional $50,000 distribution from the Amerford Fund to the Local 851 Employer Group Pension Fund and the Local 851 Employer Group Welfare Fund to settle claims for unpaid pension and welfare contributions.

On November 3, 1993, OCTF entered into a voluntary forfeiture agreement with Niehenke (the "Niehenke Agreement"). Pursuant to that agreement, Niehenke agreed to pay $100,000 in settlement of his individual forfeiture liability in exchange for being permitted to plead guilty to a single Class E felony (grand larceny in the fourth degree) relating to the Amerford scheme. On November 4, 1993, Niehenke pled guilty to

this felony and later paid the stipulated $100,000 to OCTF (the "Niehenke Fund").[4] Unlike the Amerford Agreement, the Niehenke Agreement did not contain provisions reserving any part of the forfeiture proceeds as restitution to victims. At Aronchick's direction, OCTF retained $68,495 of the Niehenke Fund and paid the remainder to OASAS.

OCTF has never commenced a civil forfeiture action against either Amerford or Niehenke pursuant to CPLR Article 13-A, and no judgment, order or decree of forfeiture has been entered against either Amerford or Niehenke with respect to the Amerford Fund or the Niehenke Fund.

B. Local 851's Litigation Against Amerford

On December 15, 1995, Local 851, through its court-appointed Independent Supervisor and Union Trustee,[5] initiated Action I before Judge Nickerson against Amerford, Razza, and others. Local 851's amended complaint alleged RICO violations and Amerford's participation in breaching Razza's fiduciary duty to Local 851 in violation of New York Labor Law §725 ("section 725"). Local 851 sought damages, including Razza's salary, as well as attorneys' fees and costs. Local 851 claims that it did not learn of the existence of the Amerford Agreement and the Amerford Fund until March 1997,

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[4] "[F]or reasons unknown to respondents, Amerford was never required to plead to a felony as contemplated by ¶ 5 of the Amerford Agreement." Resp'ts / Defs.' Mem. L. Opp. Mots. Summ. J. & Further Supp. Mot. Dismiss ("Resp'ts' Opp. Mem.") at 11 n. 6.

[5] On March 20, 1990, the United States brought a civil RICO action before Judge Nickerson alleging, in part, Local 851's involvement in labor racketeering activities with the Luchese and Gambino crime families. *United States v. Local 295*, 90 CV 970. On October 17, 1994, Judge Nickerson approved a consent decree in that action that, *inter alia,* provided for the oversight of Local 851 by the Independent Supervisor and Union Trustee.

during discovery.

As memorialized in a consent order "so ordered" by Judge Nickerson on June 16, 1998 ("Amerford Consent Order") *(*Am. Pet. Ex. C), Local 851 settled its claims against Amerford in Action I. As to the alleged RICO violations, Amerford paid Local 851 $1,200,000. In settlement of Amerford's alleged participation in the breach of Razza's fiduciary duty to Local 851, Amerford "assign[ed] to [Local 851] any rights it has under the [Amerford Agreement] with respect to the distribution of the [Amerford Fund] in accordance with the provisions of Article 13-A of the CPLR and any interest it has in the [Amerford Fund]." Amerford Consent Order at 4. Amerford further stipulated that it was liable to Local 851 for $2,000,000 "as restitution, reparations and damages . . . to Local 851, a victim of Amerford within the meaning of Article 13-A of the CPLR; provided however, that said award can only be satisfied from an apportionment of the [Amerford Fund] . . . ." *Id.* at 5. Neither OCTF nor any of the respondents was a party to the Consent Order.

Shortly after Judge Nickerson approved the Amerford Consent Order, Local 851's attorney met with Quinlan. Apparently unaware that OCTF had long since distributed nearly all of the Amerford Fund, Local 851's attorney demanded that the OCTF pay $2,000,000 to Local 851 pursuant to the Amerford Consent Order. Local 851's demand was premised on two grounds: (1) that Local 851 was a "victim" within the meaning of Article 13-A and, therefore, should have received payment from the Amerford Fund; and (2) that Local 851 had been assigned Amerford's rights to the Amerford Fund. Quinlan recommended to his superiors that the demand be rejected. OCTF accepted Quinlan's

recommendation and rejected Local 851's demand on or about August 12, 1993.

C. Local 851's Ancillary Proceeding Against Vacco and Quinlan

As a consequence of the rejection, Local 851, through its Independent Supervisor and pursuant to Fed. R. Civ. P. 64 and the doctrine of ancillary jurisdiction, initiated the Ancillary Proceeding on September 23, 1998.[6] The ancillary petition named New York Attorney General Dennis Vacco ("Vacco") and Quinlan as respondents. Again alleging that it was a victim within the meaning of Article 13-A, Local 851 claimed that it had been deprived of its due process rights, and sought a determination that it was entitled to a portion of the Amerford Fund under Article 13-A.

Vacco and Quinlan moved to dismiss the ancillary petition on Eleventh Amendment grounds. Local 851 opposed the motion and moved for summary judgment, arguing that respondents acted *ultra vires* and in violation of the union's due process rights. In an opinion dated March 30, 2000 that was highly critical of OCTF, Judge Nickerson ruled that the Eleventh Amendment forbids suits for retroactive damages against public individuals sued in their official capacities. *Local 851*, 90 F. Supp. 2d at 251. Accordingly, he granted the respondents' motion to dismiss "to the extent that the petition

[6] Rule 64 provides that "during the course of an action, all remedies providing for seizure of person or property for the purpose of securing satisfaction of the judgment ultimately to be entered in the action are available under the circumstances and in the manner provided by the law of the state in which the district court is held" and may be "ancillary" to the action. Fed. R. Civ. P. 64. "The doctrine of ancillary jurisdiction recognizes federal courts' jurisdiction over some matters (otherwise beyond their competence) that are incidental to other matters properly before them." *Presidential Gardens Assocs. v. United States*, 175 F.3d 132, 140 (2d Cir. 1999).

names respondents in their official capacities, but denied [the motion] to the extent they are named in their individual capacities." *Id.* at 252.

In his opinion, Judge Nickerson stated that Vacco and Quinlan acted *ultra vires* "without any plausible statutory or other legal authority" by distributing the Amerford and Niehenke Funds in violation of the provisions of CPLR Article 13-A. *Id.* at 247. Judge Nickerson concluded:

> Nothing in this memorandum and order should be construed as preventing or discouraging petitioner from pursuing this action against Vacco and Quinlan individually, rather than in their official capacities. The Eleventh Amendment poses no barrier to such an action, even if the result would be an award of retroactive money damages.
>
> The record at present does not provide a sufficient basis for the Court to consider such a claim. Individual capacity suits pose fundamentally different issues than those addressed in the current submissions, including the extent of respondents' personal culpability and the availability of defenses such as absolute or qualified immunity. The Court does not reach the merits of such an action at this time.

Id. at 252 (citation omitted).

II. Proceedings Subsequent to Judge Nickerson's Decision

After discovery in the Ancillary Proceeding, the Court granted Local 851 leave to amend its ancillary petition to add Goldstock and Aronchick as respondents and to add a state-law conversion cause of action.[7] *See* Order dated Nov. 4, 2002. Relying on

[7] Pursuant to the parties' stipulation, Vacco, originally one of the respondents in the Ancillary Proceeding, was dismissed from this proceeding. *See* Stip. and Order dated Feb. 13, 2003.

Judge Nickerson's conclusion that respondents' actions were *ultra vires*, Local 851 seeks to hold them, together with Quinlan, accountable in their individual capacities for violating Local 851's due process rights, as well as for conversion.

On November 18, 2002, Local 851 filed a separate civil action against Niehenke alleging violations of section 725 and due process; the parties quickly settled those claims by entering into a consent judgment, "so ordered" by this Court ("Niehenke Consent Judgment"). In the Niehenke Consent Judgment, Niehenke stipulated that: (1) Local 851 was a victim; (2) he was liable to Local 581 for $100,000 as restitution, reparations and damages; (3) such money could be satisfied solely from the Niehenke Fund; and (4) he was assigning his interest in the fund to Local 851.

Local 851 thereafter instituted Action II against Aronchick based on his actions regarding the Niehenke Fund. The factual allegations of Action II parallel those asserted in the Ancillary Proceeding involving the Amerford Fund: that in 1993, Niehenke forfeited money to OCTF; that Local 851 was a victim of Niehenke's conduct and should have received payment from OCTF; and that OCTF, as directed by Aronchick, improperly distributed the funds to OCTF and OASAS in violation of Article 13-A. Action II was thereafter consolidated with Actions I and the Ancillary Proceeding pursuant to this Court's order of January 29, 2003.

In addition to these consolidated actions, the parties are litigating similar issues in the New York Court of Claims. Describing Local 851's claims as being of "tremendous importance to law enforcement officials throughout the State of New York,"

respondents assert that the following two broad issues are at the heart of the Court of Claims case:

> (1) Whether the enactment of CPLR Article 13-A changed existing state law by imposing a new requirement on prosecutors to initiate civil forfeiture actions prior to entering into cooperation agreements which include the voluntary forfeiture of funds and
>
> (2) whether a party whose status as an alleged victim did not exist at the time a forfeiture agreement was reached has standing under CPLR Article 13-A to sue to recover funds obtained by the State pursuant to that forfeiture agreement.

Mem. L. Supp. Mot. Dismiss Am. Pet. & Aronchick Comp. ("Resp'ts' Mem.") at 3-4 .

DISCUSSION

In ruling on respondents' motion to dismiss, the Court "accept[s] all of the plaintiffs' factual allegations as true and draw[s] all reasonable inferences in favor of the plaintiffs." *Mason v. Am. Tobacco Co.*, 346 F.3d 36, 39 (2d Cir. 2003). However, "[l]egal conclusions, deductions or opinions couched as factual allegations are not given a presumption of truthfulness." *Id.* at 39 (quotation omitted). Because the Court's decision on the respondents' motion to dismiss, set forth below, disposes of all of Local 851's claims, the Court need not rule on Local 851's motion for summary judgment.

I. Standing

Standing is a jurisdictional prerequisite, *see Steel Co. v. Citizens for a Better Env't*, 528 U.S. 83, 95, 101 (1998); accordingly, the Court must initially determine whether Local 851 has standing to "invoke the jurisdiction of the federal courts to determine the

merits of the underlying disputes." *United States v. $557,933.89, More Or Less, In U.S. Funds,* 287 F.3d 66, 78 (2d Cir. 2002). As the party invoking federal jurisdiction, Local 851 bears the burden of establishing standing. *See Lujan v. Defenders of Wildlife,* 504 U.S. 555, 561 (1992).

"[S]tanding jurisprudence contains two strands: Article III standing, which enforces the Constitution's case or controversy requirement; and prudential standing, which embodies judicially self-imposed limits on the exercise of federal jurisdiction." *Elk Grove Unified Sch. Dist. v. Newdow*, 124 S.Ct. 2301, 2308 (2004) (citations omitted). The party asserting standing "need not prove the full merits of [its] underlying claim. All that needs to be shown is a *facially colorable* interest in the proceedings sufficient to satisfy the case-or-controversy requirement and prudential considerations[.]" *U.S. v. $557,933.89,* 287 F.3d at 78 (emphasis added).

In order to satisfy the constitutional strand, three elements must be met by the plaintiff:

> (1) that the plaintiff [has] suffered an "injury in fact" -- an invasion of a judicially cognizable interest which is (a) concrete and particularized and (b) actual or imminent, not conjectural or hypothetical; (2) that there be a causal connection between the injury and the conduct complained of -- the injury must be fairly traceable to the challenged action of the defendant, and not the result of the independent action of some third party not before the court; and (3) that it be likely, as opposed to merely speculative, that the injury will be redressed by a favorable decision.

Bennett v. Spear, 520 U.S. 154, 167 (1997) (citing *Lujan*, 504 U.S. at 560-61).

To assert an injury to a "judicially cognizable interest," the plaintiff need only assert a right that is "recognized" by the courts. *See McConnell v. Fed. Election Comm'n*, 124 S.Ct. 619, 708 (2003). Local 851 alleges that it had a property interest in forfeited funds under Article 13-A and that its right to due process was denied because it was deprived of that interest without notice and an opportunity to be heard. Because courts have long recognized that state statutory entitlements may create constitutionally protected property rights, *see, e.g., Kraebel v. New York City Dep't of Hous. Pres. & Dev.*, 959 F.2d 395, 404 (2d Cir. 1992) (recognizing property right under rental reimbursement statute to landlords), the rights asserted by Local 851 are "cognizable" for standing purposes.

Because Local 851 has alleged that it has suffered economic harm by the respondents, it has asserted a redressable injury-in-fact to those rights by parties who are before the Court. *See United States v. Cambio Exacto, S.A.*, 166 F.3d 522, 527 (2d Cir. 1999 ("To demonstrate standing under Article III, [] a litigant must allege a distinct and palpable injury to [itself] that is the direct result of the putatively illegal conduct of the adverse party and likely to be redressed by the requested relief. . . ."). As the Second Circuit has noted, "substantial economic harm is plainly the type of injury for which parties may seek redress in federal court." *Cambio Exacto*, 166 F.3d at 528. Local 851's alleged economic injury would clearly be redressed by a favorable decision by the Court.

Respondents contend that Local 851 lacks standing because it is not a "victim" within the meaning of Article 13-A. Whether Local 851 is such a victim, and the rights attendant upon that status, are issues to be resolved on the merits, and do not

impact standing. *See United States v. $557,933.89, More or Less, in U.S. Funds*, 287 F.3d 66, 78 (2d Cir. 2002) ("[T]o establish standing, the plaintiff need not prove the merits of his underlying claim.") (quotation omitted). Regardless of whether Local 851 would ultimately succeed on the merits, it has shown the requisite facially colorable interest in the proceedings to satisfy the Constitutional standing requirement.

The same is true of prudential considerations. "[P]rudential standing encompasses the general prohibition on a litigant's raising another person's legal rights, the rule barring adjudication of generalized grievances more appropriately addressed in the representative branches, and the requirement that a plaintiff's complaint fall within the zone of interests protected by the law invoked." *Elk Grove Unified Sch. Dist. v. Newdow*, 124 S.Ct. 2301, 2308. Nothing in this case suggests that the Court should decline jurisdiction for prudential reasons. Local 851 is not attempting to assert the rights of a third party. Nor does this case involve questions more appropriately addressed by other branches of government. Finally, Local 851's claim that it was denied its property rights in the forfeited funds without due process falls within the zone of interests protected by the due process clause. *See Bennett*, 520 U.S. at 162 ("the plaintiff's grievance must *arguably fall* within the zone of interests protected or regulated by the statutory provision or constitutional guarantee invoked in the suit.").

II. Qualified Immunity

Both qualified and absolute immunity "not only immunize[] the [] official from any liability, [they] also immunize[] that official from suit." *Hill v. City of New York*,

45 F.3d 653, 660 (2d Cir. 1995). Thus, these immunity defenses are "effectively lost if a case is erroneously permitted to go to trial." *Saucier v. Katz*, 533 U.S. 194, 200-01 (2001) (quotations omitted). Issues of immunity should, therefore, be addressed "at the earliest possible stage of litigation." *Hunter v. Bryant*, 502 U.S. 224, 227 (1991) (*per curiam*). Because the Court determines that respondents are at least entitled to qualified immunity, it need not reach the issue of absolute immunity.

"The defense of qualified immunity shields government officials performing discretionary functions 'from liability for civil damages insofar as their conduct does not violate clearly established statutory or constitutional rights of which a reasonable person would have known.'" *Kerman v. City of New York*, 374 F.3d 93, 108 (2d Cir. 2004) (quoting *Harlow v. Fitzgerald*, 457 U.S. 800, 818 (1982)). If the right is not clearly established, the reasonableness inquiry "becomes moot." *X-Men Security, Inc. v. Pataki*, 196 F.3d 56, 66 (2d Cir. 1999); *see Knox v. Southwest Airlines*, 124 F.3d 1103, 1107 (9th Cir. 1997) ("If a plaintiff fails to allege a violation of a clearly established law, the court need not even reach the [reasonableness] issues presented regarding qualified immunity.");

In *Saucier v. Katz*, 533 U.S. 194 (2001), the Supreme Court instructed that in adjudicating a qualified immunity defense, courts should first determine the constitutional right that has been violated before ascertaining whether it was clearly established. *See id.* at 200-02 (2001). Its central rationale for prescribing this two-step inquiry was that if courts consistently "skip ahead to the question whether the law [was] clearly established," *id.* at 201, standards of official conduct would tend to remain

uncertain. On the other hand, in determining whether a constitutional right was violated, "a court might find it necessary to set forth principles which will become the basis for a holding that a right is clearly established. This is the process for the law's elaboration from case to case . . . ." *Id.* However, in *Ehrlich v. Town of Glastonbury*, 348 F.3d 48 (2d Cir. 2003), the Second Circuit held that where the constitutional right is dependent on an unresolved issue of state law, the constitutional violation need not be resolved first; the Court may, instead, proceed directly to the question of whether the constitutional right was clearly established. *See Id.* at 57-60. The court reasoned that the interpretation of ambiguous state law by federal courts would be "provisional only and subject to reversal as a result of subsequent state court rulings." *Id.* at 60; *see also id.* at 58 ("adopting our own interpretation of state law would actually subvert *Saucier*, by inducing state actors to rely on our rule when that rule might change altogether upon subsequent review by the relevant state courts.").

The respondents surely are charged with knowledge that the fundamental principles of due process require notice and an opportunity to be heard before a deprivation of property attaches, and they surely should be charged with knowledge that they failed to comply with Article 13-A (indeed, as Judge Nickerson concluded, their actions were *ultra vires*). However, the appropriate inquiry is whether Local 851's property rights were clearly established. As recently succinctly explained by the Second Circuit: "To be clearly established, a right must have been recognized in a particularized rather than a general sense. In other words, it is not enough that a general right to due

process is clearly established in the Constitution," *Sira v. Morton*, 380 F.3d 57, 80 (2d Cir. 2004); rather, "the contours of that right, as they pertain to a particular issue. . . must have been delineated with sufficient clarity. . . ." *Id.* (quotation omitted). In the context of the present case, this means that it must have been clearly established that Local 851 had a property right under state law in the forfeited funds. *See Greenwood v. New York*, 163 F.3d 119, 122-23 (2d Cir. 1998) (recognizing that for a due process claim based on state entitlement to be viable in the face of qualified immunity defense, property interest must have been clearly established at the time defendants acted); *see also Ciambriello v. County of Nassau*, 292 F.3d 307, 313 (2d Cir. 2002) ("Property interests are not created by the Constitution; rather, they are created and their dimensions are defined by existing rules or understandings that stem from an independent source, such as state law -- rules or understandings that secure certain benefits and that support claims of entitlement to those benefits." (quotation omitted)).[8]

Local 851 argues that it had a property interest in the forfeited funds based on (1) its alleged status under Article 13-A as a "victim" of crimes committed by Amerford and Niehenke; and (2) that portion of the consent judgments entered into by Amerford and Niehenke assigning to Local 851 any interest they may have had in the funds. As now explained, it was unclear whether state law afforded Local 851 a property interest in the forfeited funds, either as a "victim" under Article 13-A or based on the assignments.

[8] Although the Court looks to state law, the question of whether a property right created by state law "rises to the level of a constitutionally protected property interest. . . is a matter of federal law, not state law." *Ciambriello*, 292 F.3d at 317.

Accordingly, the Court should, as *Ehrlich* instructs, avoid resolving this constitutional predicate to Local 851's due process claim, and simply conclude that qualified immunity attaches.

A. Unresolved Whether Local 851 is a "Victim" Under Article 13-A

Local 851 argues that it was clearly a "victim" under Article 13-A because, in order to qualify for that status, it need only establish that it was the victim of a crime committed by Amerford and Niehenke. Local 851 characterizes their criminal conduct as "caus[ing] a union officer to violate his fiduciary obligations to Local 851 and thereby depriv[ing] the union of the honest services of its officer." Mem. L. Supp. Pet'rs' Mot. Summ. J. ("Pet'rs' Mem.") at 11. It asserts that this scheme consisted of four crimes, namely, mail fraud, unlawful labor payoffs, larceny (the felony to which Niehenke pled guilty) and violations of New York Labor Law Section 725 (which prohibits employers from participating in or inducing violations of the fiduciary duties of union officers). *See id.* at 11-14. Respondents counter that Local 851's status as a "victim" under Article 13-A was by no means clear because Article 13-A does not define that term and neither Article 13-A nor any New York court applying it has answered the question of whether a union or other representative entity, as opposed to a natural person, may be considered a "victim" under that statute. *See* Resp'ts' Mem. at 17-18, 27.

As the parties acknowledge, Article 13-A does not define the term "victim." The parties do not cite any case that provides a definition, nor has the Court's research

uncovered one.[9] Disparate definitions of "victim" in other State statutes provide no further clarity to the definition of "victim" under Article 13-A. For example, some statutes define "victim" narrowly as those "who suffer[] personal physical injury." N.Y. Exec. L. § 621. Others include a much broader definition that includes representational victims and "good samaritan[s]." N.Y. Penal L. § 60.27. Thus, as respondents argue, it appears to be unsettled as a general proposition of State law whether a union or other representative entity, as opposed to a natural person, can be a victim for purposes of Article 13-A.

Additionally, it is unclear how Local 851 could have been a "victim" of the specific crimes that it claims to have suffered. Local 851 bases its assertion that it was the victim of mail fraud, unlawful labor payoffs, and larceny on the unlawful termination of its members. *See* Pet'rs' Mem. at 12-13. As the parties agree, Local 851's *members* were indeed victims of unlawful termination; as such, they were entitled to restitution, which

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[9] In their arguments regarding whether or not Local 851 was a "victim" under Article 13-A, the only case cited by the parties addressing that statute is *Morgenthau v. Citisource, Inc.*, 68 N.Y.2d 211 (1986), which considered whether forfeiture proceedings may be commenced against a putative criminal defendant prior to a conviction and whether the procedures provided by Article 13-A satisfy minimum due process requirements as to a criminal defendant's property rights. *Morgenthau*, however, sheds no light on the definition of "victim" under Article 13-A. Other cases cited by the parties pertain to other New York statutes that contain varying definitions of victim. *See, e.g., People v. Hall-Wilson*, 69 N.Y.2d 154, 157-58 (1987) (discussing restitution under N.Y. Penal Law § 60.27 to employer of victim); *People v. Horne*, 97 N.Y.2d 404, 412 (2002) (discussing restitution to victim who has suffered "actual out of pocket loss" under N.Y. Penal Law § 60.27); *Meditrust Fin. Servs. Corp. v. New York Crime Victims Bd.*, 640 N.Y.S.2d 676, 677-78 (3d Dep't 1996) (discussing financial aid to representatives of crime victims and whether crime victims have a legal right to such aid under N.Y. Executive Law § 620, *et seq.*). None of these cases help resolve the question of whether it was clearly established under state law that Local 851 was a victim for purposes of Article 13-A.

they received. It does not necessarily follow, however, that Local 851 was also a victim of those crimes. Local 851 has not articulated any separate injury that it suffered as a result of the unlawful terminations. Given the unsettled definition of the term "victim" in Article 13-A, the Court rejects the notion that Local 851 was a "victim" simply because its members suffered an injury for which they have already received relief. At the very least, the Court concludes that the question of whether the union *quo* union was a "victim" of these crimes was not, at any point in time, clearly established as to afford Local 851 rights under Article 13-A.

It is not surprising, then, that Local 851 relies primarily on the alleged violation of section 725, as this crime goes to the heart of its claim that Amerford and Niehenke "caused a union officer to violate his fiduciary obligations to Local 851 and thereby deprived the union of the honest services of its officer." Pet'rs' Mem. at 11. Unlike the other crimes asserted, where the only rights clearly violated were those of its members, a violation of section 725 could implicate Local 851's rights, in particular, its right to loyalty from its union officers. However, although Amerford and Niehenke settled Local 851's civil claims alleging violations of section 725, which is a misdemeanor, neither Amerford nor Niehenke has been convicted of this crime. Article 13-A provides for forfeiture actions only against criminal defendants convicted of felonies. *See* CPLR § 1310; *Dillon v. Kim*, 601 N.Y.S.2d 405, 408 (Sup. Ct. Nassau County 1993) ("a district attorney lacks the authority to seek the forfeiture of the proceeds of [a misdemeanor]"). It may well be, therefore, that a forfeiture proceeding cannot be brought against a criminal defendant who

is guilty of only a misdemeanor. Regardless, that Amerford and Niehenke settled Local 851's claims under section 725 does not translate to Local 851 being a "victim" of a crime entitled to distribution under Section 13-A.

Nor can Local 851 be adjudicated a "victim" of a violation of section 725 for purposes of Article 13-A simply because the consent judgments settling its claims against Amerford and Niehenke referred to it as such. As succinctly explained in *Crumpton v. Bridgeport Educ. Ass'n*, 993 F.2d 1023 (2d Cir. 1993), where, as here, "there was never a judicial finding that a constitutional violation had occurred precisely because a consent decree [approved by the court] resolved the parties' dispute" a carefully worded consent decree "cannot substitute for a judicial determination." *Id.* at 1029; *see also Ashley v. City of Jackson, Miss.*, 474 U.S. 900, 902 (1983) ("The cental feature of a consent decree is that it is not an adjudication on the merits.").

Consequently, the Court concludes that New York law was unresolved as to whether Local 851 had a property interest in the forfeited funds as a "victim" under Article 13-A. That the New York Court of Claims may resolve this very issue in the action pending before it further supports the Court's decision to refrain from delving into this uncertain area of state law.[10]

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[10] In Respondents' brief, which was submitted on their behalf by the New York Attorney General, the Attorney General represents that one of the issues pending before the New York Court of Claims is Local 851's status as an alleged victim under Article 13-A. *See* Resp'ts' Mem. at 3-4. Although the Court is not privy to the parties' briefs before the Court of Claims, Local 851 does not counter this representation, and the Court has no reason to doubt it.

B. Unresolved Whether Assignments Give Local 851 Property Rights

As noted above, Local 851 also asserts property rights in the forfeited funds based on that portion of the consent judgment assigning to Local 851 any interest that Amerford and Niehenke may have had in those funds. Local 851 argues that in the absence of a judicial forfeiture order (as required by Article 13-A), title never transferred from Amerford and Niehenke to the State and, therefore, that it can assert a right to the funds based on the assignment. *See* Pet'rs' Mem. at 16-22. Respondents counter that by the time the assignments were made, neither Amerford nor Niehenke had any assignable right or interest in the funds because they had already voluntarily forfeited the same, and that it was unsettled in State law whether a formal forfeiture order was required for their voluntary forfeiture to be valid. *See* Resp'ts' Opp. Mem. at 27, 39-40.

It is certain that a forfeiture order acts to terminate any property interest that a criminal defendant may have in forfeited property. *See In re Wolfson*, 261 B.R. 369, 374-75 (E.D.N.Y. 2001) ("forfeiture order divested defendants of their interests in the property"). However, the parties identify no case law, nor has the Court's research revealed any, that clarifies the issue of whether the absence of a forfeiture order renders a voluntary forfeiture invalid. The purpose of the forfeiture-order requirement and other procedural safeguards in Article 13-A is to "protect defendants from an erroneous deprivation of their property through the imposition of a provisional remedy." *Morgenthau*, 68 N.Y.2d at 222. Because Niehenke pled to a crime and Amerford waived the conviction requirement of Article 13-A, the underlying reasoning for the forfeiture-order requirement of Article 13-A

is not applicable in this case.

Moreover, the Court finds Local 851's argument to be somewhat disingenuous. Local 851 asserts that the moneys in the fund represent the proceeds of Amerford and Niehenke's wrongdoing. At the same time, it argues that they held transferable title to those funds. It is a well-established principle of State law that a person cannot benefit from his own wrongful act. *See, e.g., Tucker v. Mashomack Fish & Game Preserve Club, Inc.*, 606 N.Y.S.2d 79, 79 (3d Dep't 1993). It logically follows that a person who attains property through a wrongful act does not have transferable title to that property. *See, e.g., People v. Diehl*, 144 N.Y.S.2d 265, 266 (Sup. Ct. Monroe County 1955) ("a person cannot benefit from his own wrongful act and it follows that he cannot vest himself with title to property by means of said wrongful act."). Because the forfeited funds bear the taint of that unlawful act, it is unlikely that Amerford and Niehenke had transferable title in the funds. Accordingly, the Court questions whether a New York court would ever conclude that a criminal defendant who voluntarily forfeited wrongfully acquired funds retained a transferrable property interest in those funds.

In any event, as noted above, the New York courts have not answered the question of whether the absence of a forfeiture order renders a voluntary forfeiture invalid. Accordingly, the Court determines that New York law was uncertain as to whether Local 851 acquired a property right from the assignment. Like the issue of whether Local 851 was a victim under Article 13-A, the New York Court of Claims may also resolve the issue regarding the assignment, lending further support to the Court's decision to refrain from

delving into this uncertain area of state law.[11]

III. Conversion Claims

In light of the dismissal of Local 851's due process claims, the Court must determine whether to assert supplemental jurisdiction over Local 851's remaining state-law

conversion claim. The Court may decline to exercise supplemental jurisdiction, where, as here, "the claim raises a novel or complex issue of State law, ... [or] the district court has dismissed all claims over which it has original jurisdiction[.]" 28 U.S.C. § 1367(c).

In most circumstances, a district court should decline supplemental jurisdiction if, as here, all federal claims have been dismissed at the pleading stage. *See United Mine Workers v. Gibbs*, 383 U.S. 715, 726 (1966). In any event, the conversion claim raises novel issues of New York State law (i.e., alleged property rights under Article 13-A, the definition of victim under that statute, and the duties of officials in voluntary forfeiture

[11] In Respondents' brief, the Attorney General represents that one of the issues at the heart of case pending before the New York Court of Claims is whether prosecutors must initiate a formal civil forfeiture action prior to entering into a cooperation agreement which includes the voluntary forfeiture of funds. *See* Resp'ts' Mem. at 3. The Court has no reason to doubt this representation.

situations).

> Where a pendent state claim turns on novel or unresolved questions of state law, especially where those questions concern the state's interest in the administration of its government, principles of federalism and comity may dictate that these questions be left for decision by the state courts. This is particularly true if the federal claim on which the state claim hangs has been dismissed.

Seabrook v. Jacobsen, 153 F.3d 70, 72 (1998). The Court, therefore, declines to exercise supplemental jurisdiction over the conversion claims.

CONCLUSION

Because respondents are entitled to qualified immunity, and the Court declines to exercise supplemental jurisdiction over Local 851's state-law claim, both Actions, including the Ancillary Proceeding, are dismissed; dismissal of the state law claim is without prejudice.

SO ORDERED.

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FREDERIC BLOCK
United States District Judge

Brooklyn, New York
September 30, 2004