

**Imperial Fin. Corp. v R & R Constr. LLC**

2026 NY Slip Op 30881(U)

January 20, 2026

Supreme Court, Kings County

Docket Number: Index No. 525846/2025

Judge: Francois A. Rivera

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At an IAS Term, Part 52 of the Supreme Court of the State of New York, held in and for the County of Kings, at the Courthouse, at Civic Center, Brooklyn, New York, on the 20<sup>th</sup> day of January 2026

HONORABLE FRANCOIS A. RIVERA

-----X  
IMPERIAL FINANCE CORP.

Plaintiffs,

- against -

R & R CONSTRUCTION LLC dba R & R  
CONSTRUCTION and ROBERT ROMANOWSKI

Respondents.  
-----X

**DECISION & ORDER**

Index No.: 525846/2025

Oral Argument: 12/4/2025

Cal. No.: 24

Ms. Seq. No.: 1

Recitation in accordance with CPLR 2219 (a) of the papers considered on the notice of motion filed on October 9, 2025, under motion sequence number one, by Robert Romanowski (hereinafter the defendant or movant) for an order: (1) pursuant to CPLR 3211 (a) (1), (3) and (7) dismissing the verified complaint of Imperial Finance Corp. (hereinafter the plaintiff); (2) pursuant to CPLR 5015 (a) (1) and (3) vacating the movant’s purported default, and (3) an order directing the plaintiff to produce proof of assignment from Kabbage, Inc. to Imperial Finance Corp., including UCC-1 filings and purchase agreements.

- Notice of motion
- Affidavit in support<sup>1</sup>
- Memorandum of law in support
  - Exhibits A-F
- Amended notice of motion
- Affirmation in opposition
  - Exhibits A-D
- Affidavit in opposition<sup>2</sup>
  - Exhibits A-C
- Affirmation in reply

1 Although the movant denominated NYSCEF doc. no. 17 as an affidavit it is unsworn.

2 Although the plaintiff denominated NYSCEF doc. no. 28 as an affirmation it is not in compliance with CPLR 2106 and is inadmissible.

-Supplemental Affirmation in reply<sup>3</sup>  
Exhibits F-M

## BACKGROUND

On July 31, 2025, the plaintiff commenced the instant action for breach of contract and an account stated by filing a summons and verified complaint with the Kings County Clerk's office (KCCO).

On October 6, 2025, the movant, proceeding pro se, interposed and filed an answer with counterclaims with the KCCO.

## LAW AND APPLICATION

### *Defendant's Motion to Dismiss Pursuant to CPLR 3211 (a) (1), (3) and (7)*

“On a motion to dismiss a complaint pursuant to CPLR 3211 (a) (7) for failure to state a cause of action, the complaint is to be afforded a liberal construction, the facts alleged are presumed to be true, the plaintiff is afforded the benefit of the very favorable inference, and the court is to determine only whether the facts as alleged fit within any cognizable legal theory” (*Watts v City of New York*, 186 AD3d 1577, 1578 [2d Dept 2020]; see *Leon v Martinez*, 84 NY2d 83, 87-88 [1994]). “If the court considers evidentiary material, the criterion then becomes whether the proponent of the pleading has a cause of action, not whether he [or she] has stated one” (*Martinez v NYC Health & Hosps. Corp.*, 223 AD3d 731, 732 [2d Dept 2024] [internal quotations omitted], quoting *Sokol v Leader*, 74 AD3d 1180, 1181-1182 [2010]). “[A]ffidavits

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<sup>3</sup> Although the movant denominated NYSCEF doc. no. 35 as a supplemental affirmation it is not in compliance with CPLR 2106 and is inadmissible.

submitted by a defendant will almost never warrant dismissal under CPLR 3211 unless they establish conclusively that [the plaintiff] has no cause of action” (*Sokol v Leader*, 74 AD3d 1180, 1182 [2d Dept 2010], quoting *Lawrence v Graubard Miller*, 11 NY3d 588, 595 [2008]).

A motion pursuant to CPLR 3211 (a) (1) to dismiss the complaint on the ground that the action is barred by documentary evidence may only be granted where the documentary evidence utterly refutes the factual allegations in the complaint, thereby conclusively establishing a defense as a matter of law (*see Goshen v. Mutual Life Ins. Co. of N.Y.*, 98 NY2d 314, 326 [2002]; *IPA Asset Mgt., LLC v Schuman*, 239 AD3d 619, 621 [2d Dept 2025]). To qualify as documentary evidence, “the evidence must be unambiguous, authentic, and undeniable, such as judicial records and documents reflecting out-of-court transactions, including mortgage agreements, deeds, contracts, and any other papers, the contents of which essentially are undeniable” (*Yan Ping Xu v Van Zwiennen*, 212 AD3d 872, 874 [2d Dept 2023], quoting *Phillips v Taco Bell Corp.*, 152 AD3d 806, 807 [2d Dept 2017]).

“[T]o plead a cause of action for breach of contract, a plaintiff usually must allege that: (1) a contract exists; (2) plaintiff performed in accordance with the contract; (3) defendant breached its contractual obligations; and (4) defendant's breach resulted in damages” (*34-06 73, LLC v Seneca Ins. Co.*, 39 NY3d 44, 52 [2022] [internal citations omitted]).

An account stated refers to “an agreement between parties to an account based upon prior transactions between them with respect to the correctness of the account items and the balance due” (*Santander Bank, N.A. v Rubin Trading Corporation*, 68 Misc 3d 1013, 1020 [Sup Ct, Kings County 2020], citing *Stephan B. Gleich & Assoc. v Gritsipis*, 87 AD3d 216, 223 [2d Dept 2011]). “A *prima facie* account stated claim consists of three elements: (1) evidence of an account (a bill), based on a prior transaction between the parties, which was presented by one

party to another; (2) the recipient accepted the account (bill) as correct, either expressly or implicitly by failing to object to the amount stated therein within a reasonable timeframe; and (3) evidence the recipient had promised to pay the amount stated” (*Santander Bank, N.A. v Rubin Trading Corporation*, 68 Misc 3d 1013, 1020 [Sup Ct, Kings County 2020], citing *National Commerce Exch. of Long Is., Inc. v. Cosmopolitan Coach, Ltd.*, 120 AD3d 1208, 1209 [2d Dept 2014]).

The verified complaint pleads a cause of action for breach of contract and for an account stated. Here, the movant presented no documentary evidence demonstrating that the plaintiff does not have a cause of action. Furthermore, the movant did not provide any documentary evidence, within the intendment of CPLR 321 (a) (1), which provided a complete defense to the claims the plaintiff asserted against him.

“On a defendant's motion to dismiss the complaint based upon the plaintiff's alleged lack of standing, the burden is on the moving defendant to establish, prima facie, the plaintiff's lack of standing as a matter of law” (*Capital One, N.A. v Ludden*, 192 AD3d 752, 753 [2d Dept 2021]). The movant provided no admissible evidence demonstrating that the plaintiff lacks standing to assert a claim for breach of contract or for an account stated against him.

#### ***Defendant's Motion to Vacate Its Default***

On October 6, 2025, the movant interposed and filed an answer with counterclaims to the plaintiff's verified complaint. The plaintiff did not reject the answer. There is, therefore, no default to vacate.

#### ***Defendant's Motion for Discovery***

The defendant sought an order directing the plaintiff to produce proof of an assignment

from Kabbage, Inc. to Imperial Finance Corp., including UCC-1 filings and purchase agreements. This branch of the defendant's motion is denied without prejudice as premature. The parties are directed to participate in a preliminary conference on February 5, 2026 wherein all discovery issues can be sorted out and addressed.

**CONCLUSION**

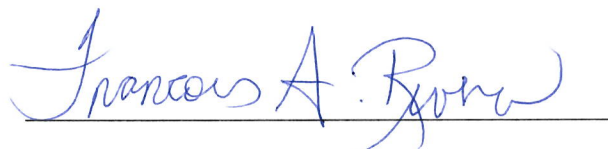
The branch of the motion by defendant Robert Romanowski for an order dismissing the complaint of plaintiff of Imperial Finance Corp. pursuant to CPLR 3211 (a) (1), (3) and (7) is denied.

The branch of the motion by defendant Robert Romanowski for an order vacating his default in answering the verified complaint is denied. Robert Romanowski has answered the verified complaint and the answer has not been rejected.

The branch of the motion by defendant Robert Romanowski for an order directing the plaintiff to produce proof of assignment from Kabbage, Inc. to Imperial Finance Corp., including UCC-1 filings and purchase agreements is denied without prejudice as premature. The parties are directed to participate in a preliminary conference on February 5, 2026, wherein all discovery issues can be sorted out and addressed.

The foregoing constitutes the decision and order of this Court.

ENTER:



J.S.C.

**HON. FRANCOIS A. RIVERA**