

**Daka Capital Group, Inc. v Granite Sta. Saddlery &  
Feed, Inc**

2026 NY Slip Op 31079(U)

March 18, 2026

Supreme Court, Kings County

Docket Number: Index No. 502291/2023

Judge: Anne J. Swern

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This opinion is uncorrected and not selected for official publication.

At an IAS Trial Term, Part 75 of the Supreme Court of the State of New York, Kings County, at the Courthouse located at 360 Adams Street, Brooklyn, New York, on the 18<sup>th</sup> day of March 2026.

P R E S E N T:

HON. ANNE J. SWERN, J.S.C.

=====
DAKA CAPITAL GROUP, INC.,

Plaintiff,

-against-

GRANITE STATION SADDLERY & FEED, INC
DBA GRANITE STATION SADDLERY & FEED,
JACK SMITH,

Defendants.
=====

ORDER

Index No.:
502291/2023

Calendar No.: 7

Return Date:
3/19/2026

Motion Seq.: 4

Recitation of the following papers as required by CPLR 2219(a):

Papers
Numbered

MS #004
Notice of Motion, Affirmation in Support, Supporting Exhibits, and
Affirmation of Service.....NYSCEF Doc Nos. 65-76, 78

Upon the foregoing papers, the decision and order of the Court is as follows:

Plaintiff, DAKA CAPITAL GROUP, INC.'s ("plaintiff") motion for an Order granting summary judgment pursuant to CPLR § 3212 is DENIED.

On or about 7/21/2022, plaintiff and defendant GRANITE STATION SADDLERY & FEED, INC DBA GRANITE STATION SADDLERY & FEED ("defendant Granite") entered into an agreement, whereby plaintiff agreed to purchase all rights to \$55,960.00 of defendant Granite's future receivables. As a condition to plaintiff's purchase under the agreement, defendant JACK SMITH ("defendant Smith") personally guaranteed any and all amounts owed to plaintiff by defendant Granite upon a breach of performance by defendant Granite.

Pursuant to the agreement, defendant Granite agreed to maintain one bank account approved by plaintiff, from which defendant Granite authorized plaintiff to make ACH withdrawals until the purchased receivables were fully paid to plaintiff.<sup>1</sup> Plaintiff asserts that it has satisfied its obligation under the agreement by delivering to defendant Granite the agreed upon purchase price for said receivables. Defendants also admitted that plaintiff delivered the purchase price for the receivables under the agreement, minus the origination fee, to defendant Granite. Initially, defendant Granite met its obligations under the agreement. However, defendant Granite breached the agreement and stopped delivering the purchased receivables to plaintiff.<sup>2</sup>

Defendants defaulted on the agreement and have admitted they only delivered \$45,467.50 of the \$55,960.00 purchased receivables to plaintiff. Defendants also admitted that defendant Granite has collected revenue, receivables, or other income between 11/05/2022 and present, and delivered no portion thereof to plaintiff.

Upon information and belief, defendant Granite is still conducting regular business operations, and despite due demand, defendant Granite failed to pay the amounts due and owing to plaintiff under the agreement.<sup>3</sup> It is plaintiff's assertion that defendant Smith is responsible for all amounts incurred as a result of any default of defendant Granite under the agreement, yet has refused to pay the amounts due and owing thereunder. As such, plaintiff asserts that per the

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<sup>1</sup> Defendants admitted entering into the agreement to sell future receivables to plaintiff, including the personal guarantee (Exh. D at ¶1-4).

<sup>2</sup> In the event defendants' business was not generating enough revenue to deliver the purchased receivables, the agreement also contained reconciliation and adjustment provisions, whereby defendant Granite had the right to request retroactive reconciliation of their actual receipts or modification of the delivery amount (Exh. G at ¶1.4). And defendants also admitted that they never requested a reconciliation or adjustment of the delivery amount per the terms of the Agreement (Exh. D at ¶10).

<sup>3</sup> Pursuant to Appendix A of the agreement, defendant granite has also incurred additional fees as follows: \$650.00 NSF Fee as defined in Paragraph C (\$50.00 for each of 13 occurrences), \$2,500.00 Blocked Account Fee as defined in Paragraph F, and a \$5,000.00 Default Fee as defined in Paragraph H, all amounting to \$8,150.00.

agreement, defendants now still have an obligation to deliver to plaintiff an additional \$18,642.50, plus costs, disbursements, and statutory interest from 11/05/2022, and attorney's fees.

Summary judgment may be granted only when no triable issue of fact exists (*Alvarez v Prospect Hospital*, 68 NY2d 320, [1986]). "A party moving for summary judgment must make a prima facie showing of entitlement to judgment as a matter of law, producing sufficient evidence to demonstrate the absence of any material issue of fact. However, a failure to demonstrate a prima facie entitlement to a summary judgment motion, requires a denial of the motion regardless of the adequacy of the opposing papers" (*Ayotte v Gervasio*, 81 NY2d 1062, 1063 [1993], citing *Alvarez v Prospect Hospital*, 68 NY2d 324). "Once this showing has been made, the burden shifts to the nonmoving party to produce evidentiary proof in admissible form sufficient to establish the existence of material issues of fact that require a trial for resolution" (*Giuffrida v Citibank*, 100 NY2d 72, 81 [2003] and *Alvarez v Prospect Hospital*, 68 NY2d 324).

As this Court held in *Atipana Credit Opportunity Fund I. LP v Empire Restaurants AZ Corp* (80 Misc 3d 1208[A], 2023 NY Slip Op. 50939[U] [Sup Ct, Kings County 2023]), (a) the party moving for summary judgment must present a prima facie case of entitlement to judgment as a matter of law, tendering sufficient evidence in admissible form demonstrating the absence of material issues of fact, and the failure to make such a showing requires denial of the motion; (b) inconsistencies which appear on the face of plaintiff's own papers prohibit the granting of summary judgment, despite the inadequacy of the opposing papers; and (c) even in the absence of opposition, it would be unconscionable for this Court to grant summary judgment to a moving plaintiff where there is a complete absence of the most basic prima facie case of entitlement to judgment as a matter of law.

Plaintiff's motion for summary judgment is denied. Plaintiff has failed to establish all the elements of a breach of contract claim (*Cruz v Cruz*, 213 AD3d 805, 807 [2d Dept 2023]) and a *prima facie* entitlement to summary judgment through admissible evidence (*Alvarez v Prospect Hospital*, 68 NY2d 324 and *Giuffrida v Citibank*, 100 NY2d 81).

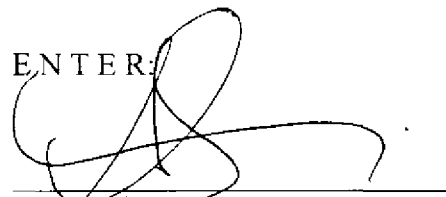
The essential elements to recover damages for breach of contract are the existence of a contract, plaintiff's performance, defendant's breach of its contractual obligations, and damages (*see Cruz v Cruz, supra*). Here, plaintiff did not submit certified bank records evidencing either a wire transfer or canceled bank check to establish proof of funding (CPLR § 4518). The statements in plaintiff's affidavit are inadmissible to establish performance under the contract. Likewise, the print-out of the ledger submitted as evidence of defendants' breach constitutes inadmissible hearsay.

The Court has considered the parties remaining arguments and finds same to be without merit.

Accordingly, it is hereby

ORDERED that plaintiff's motion for summary judgment pursuant to CPLR § 3212 is DENIED.

This constitutes the decision and order of the Court.

ENTER:  
  
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Hon. Anne J. Swern, J.S.C.  
Dated: 3/18/2026