

Nittolo v Rosenberg

2026 NY Slip Op 31125(U)

March 16, 2026

Supreme Court, New York County

Docket Number: Index No. 650760/2025

Judge: Leslie A. Stroth

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SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY

PRESENT: HON. LESLIE A. STROTH PART 12M

Justice

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RAFAELA NITTOLO,

Plaintiff,

- v -

MICHAEL ROSENBERG, BEDRICK KAITZ AGENCY, INC., RISK STRATEGIES COMPANY

Defendant.

-----X

INDEX NO. 650760/2025

MOTION DATE 03/25/2025, 06/09/2025

MOTION SEQ. NO. 001 002

DECISION + ORDER ON MOTION

The following e-filed documents, listed by NYSCEF document number (Motion 001) 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 26, 29, 30, 40, 41

were read on this motion to/for DISMISSAL

The following e-filed documents, listed by NYSCEF document number (Motion 002) 31, 32, 33, 34, 35, 36, 37, 38, 39, 42, 43, 44, 45, 46

were read on this motion to/for DISMISS

Plaintiff commenced this action after selling all her interest in Defendant Bedrick Kaitz Agency, Inc.'s ("BKA") assets, including its accounts, to Defendant Michael Rosenberg ("Rosenberg"). At the time of sale, Plaintiff and Rosenberg entered an Agreement that contained a confidentiality provision. The Agreement's confidentiality provision prevented Rosenberg, BKA (on behalf of themselves and their affiliates), and Plaintiff (on behalf of herself and her affiliates) from discussing the existence of the Agreement, and from discussing information regarding the parties to the Agreement, without the prior written consent of the other party. Sometime thereafter, BKA was then acquired by Defendant Risk Strategies Company ("Risk").

When BKA was acquired by Risk, Risk issued a press release that Plaintiff alleges is in breach of the Agreement's confidentiality provision. Plaintiff commenced this action for breach of contract, arguing that the Defendants violated the confidentiality provision of the Agreement by issuing public statements regarding the sale of BKA to Rosenberg.

In Motion Sequence 001, Defendant Risk moves to dismiss Plaintiff's Complaint pursuant to CPLR § 3211(a)(1). In Motion Sequence 002, Defendants Rosenberg and BKA move to dismiss Plaintiff's Complaint pursuant to CPLR §§ 3211(a)(1), (a)(3), and (a)(7). For the reasons outlined below, the Court is granting both motions.

LEGAL STANDARD

Pursuant to CPLR § 3211 (a)(1) "dismissal is warranted only if the documentary evidence submitted conclusively establishes a defense to the asserted claims as a matter of law." (*Leon v Martinez*, 84 NY2d 83, 88 [1994]).

Pursuant to CPLR 3211 (a)(3) "a party may move for judgment dismissing one or more causes of action asserted against him on the ground that the party asserting the cause of action has not legal capacity to sue." "In general a party's competence to commence an action is presumed" and, thus, a party seeking to dismiss a complaint pursuant to CPLR 3211 (a)(3) bears "the burden of demonstrating that the plaintiff was not competent" (*Vasilatos v. Dzamaba*, 148 AD3d 1275, 1276 [3d Dept 2017]).

Pursuant to CPLR § 3211 (a)(7), a party may move to dismiss a claim on the ground that the pleading fails to state a cause of action. Upon such a motion, the Court must accept the facts alleged as true and determine simply whether plaintiff's facts fit within any cognizable legal theory. (*See CPLR 3026; Morone v Morone*, 50 NY2d 481 [1980]). The complaint shall be

liberally construed, and the allegations are given the benefit of every possible favorable inference. (See *Leon v Martinez*, 84 NY2d 83, 87 [1994]).

The elements of a claim for breach of contract are: (1) the existence of a contract; (2) a plaintiff's performance under the contract; (3) a defendant's breach of the contract; and (4) resulting damages to a plaintiff (*Harris v. Seward Park Housing Corp.*, 79 AD3d 425, 426 [1st Dept 2010] citing *Morris v 702 E. Fifth St. HDFC*, 46 AD3d 478, 850 [2007]).

DISCUSSION

In Motion Sequence 001, Defendant Risk moves to dismiss Plaintiff's Complaint, arguing that Risk is not a party to the Agreement and therefore, is not obligated to abide by the terms of the confidentiality provision. Risk posits that the only parties to the Agreement were Plaintiff, BKA, and Rosenberg, and that as a non-party, Risk was not obligated to abide by the Agreement's terms. Furthermore, Risk argues that even if Risk was a party to the Agreement, Risk made no mention of the Agreement or any information regarding Plaintiff in its press release, thereby abiding by the terms of the Agreement's confidentiality provision.

Plaintiff argues that when Risk acquired BKA, Risk assumed BKA's responsibilities under the Agreement, and that a press-release announcing Risk's acquisition of BKA violates the agreement because the agreement "disclos[es] information about BKA[] without [Plaintiff's] prior consent or knowledge" (Plaintiff's Opposition, NYSCEF Doc. No. 29 at 10).

In Motion Sequence 002 Defendants Rosenberg and BKA move to dismiss Plaintiff's Complaint, arguing that Defendants Rosenberg and BKA did not breach the Agreement's confidentiality provision, and that Plaintiff is barred by the six-year statute of limitations for breach of contract claims (CPLR § 213[2]).

Plaintiff counters, stating that by announcing that Risk acquired BKA, the Defendants disclosed information about BKA and the existence of the Agreement without Plaintiff's consent. Specifically, Plaintiff states that the description of Risk's acquisition of BKA violates the confidentiality provision because it discloses information about BKA.

The confidentiality provision of the Agreement reads:

Except in connection with the performance of their obligations under this Agreement, the Buyer [Rosenberg] and the Company [BKA] on behalf of themselves, and their affiliates, on the one hand, and the Seller [Plaintiff] on behalf of herself and her affiliates on the other hand, shall not disclose (except as necessary to their representatives, agents, lenders and investors) the existence of this Agreement or any of the agreements to be executed at Closing or any of the terms and conditions contained herein or therein without the prior written consent of the other Parties hereto. *The Buyer [Rosenberg], the Company [BKA], and the Seller [Plaintiff], on behalf of themselves and their affiliates, shall not disclose (except as necessary to their representatives, agents, lenders and investors) any information regarding the other or their affiliates, including personal information, without the prior written consent of the other Party.*

(Agreement, § 4.1 "Confidentiality," NYSCEF Doc. No. 2 [emphasis added].) This provision, as written, does not prohibit one party from "disclosing" information about itself. The provision, for example, does not prohibit BKA from "disclosing" information about BKA. The provision only prohibits BKA from "disclosing" information about another party to the Agreement.

The public disclosure that Plaintiff cites as a violation of the confidentiality provision reads, in relevant part:

BKA is run by its Chief Executive Officer, [Rosenberg], who acquired the firm from one of its original founders, Donald Kaitz, shortly after joining the company in the 1980s. Prior to acquiring BKA, Rosenberg was a personal lines specialist with a boutique brokerage in New York City.

(Plaintiff's Opposition to Defendants' Motions, NYSCEF Doc. No. 29 at 16; NYSCEF Doc. No. 44 at 11-12.) Notably, the public disclosure does not discuss Plaintiff and does not reveal the Agreement signed by Plaintiff and the Defendants.

Plaintiff's Opposition to Defendants' Motions argues that BKA needed to have consulted with Plaintiff before speaking publicly about itself; or, as applied to Risk, Plaintiff argues that by assuming BKA's confidentiality obligations, Risk was prohibited from "disclosing" information about the very entity whose obligations it assumed.

However, it does not appear that this was the purpose of the confidentiality provision as written. In fact, the press release largely complies with the confidentiality provision by keeping the Agreement, and Plaintiff as the opposite party to the Agreement, confidential. Defendants did not breach the Agreement, because Defendants did not "disclose... any information regarding the other [Party] or their affiliates, including personal information, without the prior written consent of the other Party" (Agreement, § 4.1 "Confidentiality," NYSCEF Doc. No. 2). Rather, Risk disclosed that Rosenberg acquired BKA from a non-party, and that BKA was now being acquired by Risk. Plaintiff is not mentioned, nor is the Agreement, therefore, the confidentiality provision was not violated.

In light of the foregoing, there was no breach of contract, and Plaintiff's complaint against Defendants is therefore, dismissed. The Court need not address Plaintiff's argument that Risk assumed the obligations of the Agreement, because there was no breach of the Agreement.

Accordingly, it is hereby

ORDERED that Defendant Risk Strategies Company Motion to Dismiss Plaintiff's Complaint is granted; and it is further

ORDERED that Defendants Michael Rosenberg and Bedrick Kaitz Agency, Inc.'s Motion to Dismiss Plaintiff's Complaint is granted.

The foregoing constitutes the decision and order of the Court.

3/16/2026
DATE

[Signature]
HON. JESSE H. BROTH
J.S.C.

CHECK ONE: CASE DISPOSED DENIED NON-FINAL DISPOSITION

APPLICATION: GRANTED SETTLE ORDER GRANTED IN PART OTHER

CHECK IF APPROPRIATE: INCLUDES TRANSFER/REASSIGN SUBMIT ORDER FIDUCIARY APPOINTMENT REFERENCE