

**Lynx Capital Partners of N.J., LLC v Bayes Capital  
LLC**

2021 NY Slip Op 30006(U)

January 4, 2021

Supreme Court, New York County

Docket Number: 650722/2019

Judge: Andrew Borrok

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This opinion is uncorrected and not selected for official publication.

**SUPREME COURT OF THE STATE OF NEW YORK  
NEW YORK COUNTY**

**PRESENT:** HON. ANDREW BORROK PART IAS MOTION 53EFM

*Justice*

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LYNX CAPITAL PARTNERS OF NJ, LLC,

Plaintiff,

- v -

BAYES CAPITAL LLC, DOUGLAS SANZONE, JOHN  
GERACI, JOHN GRIFONETTI

Defendant.

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INDEX NO. 650722/2019

MOTION DATE 02/04/2020

MOTION SEQ. NO. 002

**DECISION + ORDER ON  
MOTION**

The following e-filed documents, listed by NYSCEF document number (Motion 002) 55, 56, 57, 58, 59, 60, 61, 62, 63, 64, 65, 66, 67, 68, 70, 71, 72

were read on this motion to/for

DISMISS

Reference is made to a Decision and Order (the **Prior Decision**; NYSCEF Doc. No. 36), dated October 21, 2019 pursuant to which the Complaint was dismissed and leave was granted to file an Amended Complaint. The facts of this case are set forth in the Prior Decision. Familiarity is presumed. Upon the foregoing documents, and for the reasons set forth below, the defendants' motion to dismiss brought pursuant to CPLR § 3211 is denied with respect to the breach of contract (first) cause of action but is otherwise granted without prejudice.

The defendants' argument that the breach of contract (first) cause of action must be dismissed based on the law of the case fails. Dismissal of the breach of contract cause of action based on an alleged breach of the License Agreement was not granted with prejudice. Dismissal was only granted based on a cause of action based on a separate oral agreement which the Amended Complaint does not allege. The Amended Complaint alleges that the License Agreement was

amended to a fee of \$150,000 (per month) and the breach of contract cause of action is based on the defendants' failure to make payments due under the License Agreement, as amended. In support of these allegations, the Plaintiff offers certain documentary evidence which it now explains and certain conduct of the defendants evidencing their acceptance of these amendments of the License Agreement, including payment in October 2017. Given the prior allegations and the invoices attached as exhibits to the Amended Complaint, there simply is no surprise or prejudice to the defendants. Thus, the motion to dismiss the breach of contract cause of action is denied.

Dismissal of the fraudulent conveyance (second) cause of action and the violations of New York's Uniform Fraudulent Transfer Act (NY Debt & Cred. Law 270) (third) cause of action are however granted without prejudice. Section 276 of the NY Debtor and Creditor Law provides that conveyances made with the actual intent to "hinder, delay or defraud either present or future creditors, is fraudulent." Proof of unfair consideration or insolvency is not required. Due to the difficulty of proving actual fraud, intent can be inferred based on so-called "badges of fraud" (*see Wall St. Assoc. v Brodsky*, 257 AD2d 526, 529 [1st Dept 1999]). Here, the Plaintiff argues that the second cause of action based on actual fraud should not be dismissed because the Amended Complaint alleges that Bayes made distributions to its principals Sanzone, Geraci and Grifonetti, for no consideration when it owed substantial sums of money to the Plaintiff, starting in 2015 and 2016 in the amount of \$450,000 and \$230,000, respectively, and that such allegedly fraudulent transfers were atypical and continued through 2017, 2018 and 2019 when Bayes owed the Plaintiffs \$1,800,000. The argument fails.

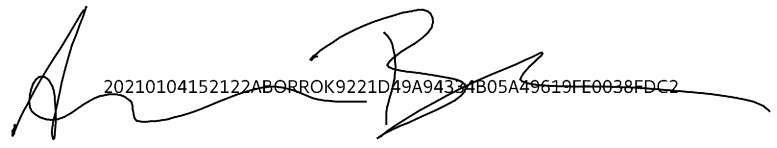
Based on the Amended Complaint, even taking the allegations as true as the court must on a motion to dismiss (*see Leon v Martinez*, 84 NY2d 83, 87-88 [1994]), it simply can not be said that the 2015 and 2016 distributions are an appropriate predicate for a claim sounding in fraud because the Amended Complaint alleges, among other things, that in October 2017, the defendants paid in full “\$727,500 reflecting the \$750,000 invoice with a slight discount for the months of January 2018 through March 2018” (*see Amend. Comp.*, NYSCEF Doc. No. 37, ¶ 37) and the documentary evidence submitted in support of these claims demonstrates that assets exceeded liabilities in both 2015 and 2015 (*see* NYSCEF Doc. Nos. 48 and 49). To the extent that the Amended Complaint alleges that subsequent distributions were made to defraud creditors, the Amended Complaint fails for lack of specificity under CPLR § 3016(b). Should discovery disclose subsequent distributions to the principals of Bayes which could support such a claim based on either actual or constructive fraud, the plaintiffs may move to amend.

Accordingly, it is

ORDERED that the defendants’ motion to dismiss is denied with respect to the breach of contract (first) cause of action but is otherwise granted without prejudice; and it is further

ORDERED that the defendants shall file an answer within 20 days of the date of this decision and order; and it is further

ORDERED that the parties shall attend a remote conference on February 23, 2021 at 12pm.



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1/4/2021  
DATE

ANDREW BORROK, J.S.C.

CHECK ONE:	<input type="checkbox"/>	CASE DISPOSED	<input checked="" type="checkbox"/>	NON-FINAL DISPOSITION	
	<input type="checkbox"/>	GRANTED	<input type="checkbox"/>	GRANTED IN PART	<input type="checkbox"/>
APPLICATION:	<input type="checkbox"/>	SETTLE ORDER		SUBMIT ORDER	
CHECK IF APPROPRIATE:	<input type="checkbox"/>	INCLUDES TRANSFER/REASSIGN		FIDUCIARY APPOINTMENT	<input type="checkbox"/>
					REFERENCE