

**R.R. Donnelley & Sons Co. v Nationwide Mtge.
Bankers, Inc.**

2021 NY Slip Op 31448(U)

April 28, 2021

Supreme Court, New York County

Docket Number: 651601/2021

Judge: Nancy M. Bannon

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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. NANCY M. BANNON PART IAS MOTION 42EFM

Justice

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R.R. DONNELLEY & SONS COMPANY

Plaintiff,

- v -

NATIONWIDE MORTGAGE BANKERS, INC.,

Defendant.

-----X

INDEX NO. 651601/2021
MOTION DATE 04/01/2021
MOTION SEQ. NO. 001

**DECISION + ORDER ON
MOTION**

The following e-filed documents, listed by NYSCEF document number (Motion 001) 7, 8, 9, 10 were read on this motion to/for DISMISSAL.

In this breach of contract action, the plaintiff alleges that on or about March 11, 2020, it entered an agreement with the defendant to produce and mail marketing materials to the defendant's potential customers for an agreed upon price of \$61,700.00. It further alleges that it then printed material and purchased data to enable mailing, but was unable to send any material because the defendant ceased all communications.

The plaintiff commenced this action with a complaint containing these allegations and seeking money damages of \$28,795.63 and attorney's fees in two separate causes of action. The plaintiff appends an invoice addressed to the defendant in that amount, showing costs for printing and purchasing of data, and email communications between the parties.

The defendant responded by moving to dismiss the complaint pursuant to CPLR 3211(a)(7) on the ground of failure to state a cause of action, essentially arguing that the complaint does not contain enough facts to properly defend itself. No opposition is submitted. The motion is denied.

When assessing the adequacy of a pleading in the context of a motion to dismiss under CPLR 3211(a)(7), the court's role is "to determine whether [the] pleadings state a cause of action." 511 W. 232nd Owners Corp. v Jennifer Realty Co., 98 NY2d 144, 151-152 (2002). To determine whether a claim adequately states a cause of action, the court must "liberally construe" it, accept the facts alleged in it as true, accord it "the benefit of every possible favorable inference" (id. at 152: see Romanello v Intesa Sanpaolo, S.p.A., 22 NY3d 881 [2013]; Simkin v Blank, 19 NY3d 46 [2012]), and determine only whether the facts, as alleged, fit within any cognizable legal theory. See Hurrell-Harring v State of New York, 15 NY3d 8 (2010); Leon v Martinez, 84 NY2d 83 (1994). "The motion must be denied if from the pleading's four corners factual allegations are discerned which taken together manifest any cause of action cognizable at law." 511 W. 232nd Owners Corp. v Jennifer Realty Co., supra, at 152 (internal quotation marks omitted); see Leon v Martinez, supra; Guggenheimer v Ginzburg, 43 NY2d 268 (1977).

Applying this standard, the complaint sufficiently pleads a cause of action for breach of contract, *i.e.*, (1) the existence of a contract, (2) the plaintiff's performance under the contract, (3) the defendant's breach of that contract, and (4) resulting damages. See Second Source Funding, LLC v Yellowstone Capital, LLC, 144 AD3d 445 (1st Dept. 2016); Harris v Seward Park Housing Corp., 79 AD3d 425 (1st Dept. 2010). It also pleads, for purposes of CPLR 3211(a)(7), a cause of action for an account stated in that the defendant "received [and] retained without objection" the invoices sent by the plaintiff. Scheichet & Davis, P.C. v Nohavicka, 93 AD3d at 478 (1st Dept. 2012), quoting Gamiel v Curtis & Reiss-Curtis, P.C., 60 AD3d 473, 474 (1st Dept. 2009). While the plaintiff may not ultimately succeed on its claims, the complaint is not subject to dismissal at this juncture.

The parties are encouraged to confer for purposes of settlement.

Accordingly, it is

ORDERED that the defendant's pre-answer motion to dismiss is denied, and it is further

ORDERED that the defendant shall serve and file an answer to the complaint within 30 days of the date of this order, and it is further

ORDERED that the Clerk shall mark the file accordingly.

This constitutes the Decision and Order of the court.


NANCY M. BANNON, J.S.C.
HON. NANCY M. BANNON

4/28/2021

DATE

CHECK ONE:

CASE DISPOSED

GRANTED

DENIED

NON-FINAL DISPOSITION

GRANTED IN PART

OTHER