

**Monnalisa S.p.A., MSD, USA LLC v Chelsea Kids,  
Inc.**

2025 NY Slip Op 30682(U)

February 27, 2025

Supreme Court, New York County

Docket Number: Index No. 651509/2018

Judge: Sabrina Kraus

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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. SABRINA KRAUS **PART** **57M**

*Justice*

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MONNALISA S.P.A., MSD, USA LLC,

Plaintiffs,

- v -

CHELSEA KIDS, INC., A NEW YORK CORPORATION, LOL  
KIDS, LLC, SCH ENTERPRISES, LLC, JOE  
SCHOENFELDER, ITALIA DESIGN STUDIO LLC, JOHN  
DOES, JANE DOES, ABC CORPORATIONS

Defendants.

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**INDEX NO.** 651509/2018

**MOTION DATE** 12/12/2024

**MOTION SEQ. NO.** 002

**DECISION + ORDER ON  
MOTION**

The following e-filed documents, listed by NYSCEF document number (Motion 002) 78, 79, 80, 81, 82, 83, 84, 85, 86, 87, 88, 89, 90, 91, 92, 93, 94

were read on this motion to/for JUDGMENT - SUMMARY.

**BACKGROUND**

This action arises out of disputes between the parties who were engaged in various business transactions together related to the sale of children’s clothing.

The complaint asserts cause of action for breach of contract, account stated, unjust enrichment, “open book account”, “breach of goodwill”, Account Stated, conversion, and piercing the corporate veil.

Only one of the named defendants has filed an answer in this action and that is Joe Schoenfelder (JS). The rest of the defendants appear to be in default. JS’ answer asserts five affirmative defenses including that plaintiffs defaulted under the terms of the parties’ contracts, and that payment was made where due.

## PENDING MOTION

On January 3, 2025, plaintiffs moved for summary judgment. On February 10, 2025 the motion was fully briefed and marked submitted. For the reasons set forth below, the motion is denied.

## DISCUSSION

### *Summary Judgment Standard*

Summary judgment is a drastic remedy reserved for those cases where there is no doubt as to the existence of material and triable issues of fact (*Sillman v. Twentieth Century–Fox Film Corp.*, 3 N.Y.2d 395, 404, 165 N.Y.S.2d 498, 144 N.E.2d 387 [1957] ).

To prevail on a motion for summary judgment, the movant must establish, *prima facie*, its entitlement to judgment as a matter of law, providing sufficient evidence demonstrating the absence of any triable issues of fact. CPLR 3212(b); *Matter of New York City Asbestos Litig.*, 33 NY3d 20, 25-26 (2019). If this burden is met, the opponent must offer evidence in admissible form demonstrating the existence of factual issues requiring a trial; “conclusions, expressions of hope, or unsubstantiated allegations or assertions are insufficient.” *Justinian Capital SPC v WestLB AG*, 28 NY3d 160, 168 (2016), quoting *Gilbert Frank Corp. v Fed. Ins. Co.*, 70 NY2d 966, 967 (1988).

In deciding the motion, the evidence must be viewed in the “light most favorable to the opponent of the motion and [the court] must give that party the benefit of every favorable inference.” *O’Brien v Port Auth. of New York and New Jersey*, 29 NY3d 27, 37 (2017).

### ***Motion is Denied as to all Defendants who have Not filed an Answer***

CPLR 3212 provides in pertinent part:

A motion for summary judgment shall be supported by affidavit, by a copy of the pleadings and by other available proof, such as depositions and written admissions. The

affidavit shall be by a person having knowledge of the facts; it shall recite all the material facts; and it shall show that there is no defense to the cause of action or that the cause of action or defense has no merit.

The notice of motion fails to specify as against which defendants plaintiffs seeks an award of summary judgment, whether plaintiffs seek partial summary judgment and which causes of action summary judgment is sought on.

The motion fails to annex the pleadings as required by the statute. While normally, in these days of e-filing, this is a defect the Court would be inclined to overlook [*see eg Reyes v Sanchez* 117 Ad3d 621(2014)(*holding failure to annex pleadings to moving papers not fatal where they were otherwise provided to the court*), in this action where there appears to be no answer filed on behalf of any of the defendants except JS, and the moving papers in no way address the status of these other defendants, the court cannot overlook the failure to annex or address the pleadings.

Assuming in fact all the defendants except JS are in default, no motion for summary judgment lies as to these defendants, as the Court may only entertain such a motion after the joinder of issue [CPLR 3212(a)].

Based on the foregoing, the motion is denied as to all defendants except JS, as the Court can take notice of the answer of JS which is filed on NYSCEF.

***Motion for Summary Judgment is Denied as to JS***

The only claim for summary judgment found in the body of the motion papers that applies to JS is the request for summary judgment on the fourteenth cause of action, JS' personal guarantees.

The fourteenth cause of action asserts:

Pursuant to the Agreement, Defendant SCHOENFELDER personally guaranteed that the Defendant Company would perform its obligations thereunder and that Defendant

SCHOENFELDER would be personally liable for any loss suffered by Plaintiff as a result of certain breaches by the Company Defendant.

Company Defendant has breached the Agreement by failing to pay, its obligations to Plaintiff.

By reasons of the foregoing, Plaintiff is entitled to judgment against Defendant SCHOENFELDER based on his personal guaranty in the sum of \$593,053.36, plus statutory interest, costs, and disbursements and attorney's fees

There are many different “agreements” referred to in the complaint and they are interchangeably referred to as the Agreement, the term though capitalized is not otherwise defined.

JS acknowledges he executed a personal guarantee, but asserts it was only for specific obligations, namely the shipment of certain goods from Fall Winter 2014 and Spring Summer, then in 2015 and 2016. JS asserts that Plaintiffs breached the underlying contract or agreement that the limited guarantees pertained to and failed to provide the goods due.

The guarantee does not in its body refer to guaranteeing the obligations on any agreement, but only payment for certain goods that were to be delivered. Based on the foregoing, the Court finds that plaintiffs have failed to establish a *prima facie* entitlement to summary judgment as a matter of law, and assuming *arguendo* plaintiffs had made such a showing, JS has raised a question of fact as to whether there was performance by plaintiffs in delivering the goods that were the subject of the guarantee.

### **CONCLUSION**

WHEREFORE it is hereby:

ORDERED that the motion is denied in its entirety: and it is further

ORDERED that defendants shall, within 20 days from entry of this order, serve a copy of this order with notice of entry upon counsel for all parties hereto and upon the Clerk of the General Clerk's Office; and it is further

ORDERED that such service upon the Clerk shall be made in accordance with the procedures set forth in the *Protocol on Courthouse and County Clerk Procedures for Electronically Filed Cases* (accessible at the "E-Filing" page on the court's website at the address [www.nycourts.gov/supctmanh](http://www.nycourts.gov/supctmanh)); and it is further

This constitutes the decision and order of this court.

2/27/2025

DATE

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SABRINA KRAUS, J.S.C.

CHECK ONE:

CASE DISPOSED

NON-FINAL DISPOSITION

GRANTED

DENIED

GRANTED IN PART

OTHER

APPLICATION:

SETTLE ORDER

SUBMIT ORDER

CHECK IF APPROPRIATE:

INCLUDES TRANSFER/REASSIGN

FIDUCIARY APPOINTMENT

REFERENCE