

Cheese Bus, Inc. v Fitmar Mgt., LLC

2025 NY Slip Op 30809(U)

March 7, 2025

Supreme Court, Kings County

Docket Number: Index No. 530823/2022

Judge: Carolyn E. Wade

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This opinion is uncorrected and not selected for official publication.

<p>PRESENT: HON. <u>CAROLYN E. WADE</u>, JSC</p>	<p>At IAS Part <u>84</u>, of the Supreme Court of the State of New York, held in and for the County of Kings, at the courthouse located at 360 Adams Street, Brooklyn, New York, 11201 on the <u>7th</u> day of March, 2025.</p>
<p>SUPREME COURT OF THE STATE OF NEW YORK COUNTY OF KINGS</p>	
<p>CHEESE BUS, INC.</p> <p style="text-align: center;">Plaintiff,</p> <p style="text-align: center;">-against-</p> <p>FITMAR MANAGEMENT, LLC, D/B/A BROOKLYN LIFESTYLE ATHLETIC CLUB ("BKLA")</p> <p style="text-align: center;">Defendant,</p>	<p style="text-align: center;">DECISION & ORDER</p> <p style="text-align: center;">Index No.: <u>530823/2022</u></p> <p style="text-align: center;">Cal #6 MS#2</p>

The following were read on this motion: NYSCEF Doc Nos.: 13-26.

Upon the foregoing papers, and after oral argument, Plaintiff, CHEESE BUS INC's ("Plaintiff") motion, pursuant to CPLR § 3212(e), for partial summary judgment against Defendant FITMAR MANAGEMENT, LLC, D/B/A BROOKLYN LIFESTYLE ATHLETIC CLUB ("BKLA"), for breach of contract, and for an Order, pursuant to CPLR § 4317(b), granting a

hearing before a special referee to determine damages, including, costs, disbursements, and general lost profits consequential damages, is decided as follows:

UNDISPUTED FACTS

On or about April 29, 2022, Plaintiff and Defendant BKLA entered into a school bus transportation services contract ("School Bus Agreement") in which Plaintiff agreed to provide school bus transportation services in consideration for payment in full to Defendant BKLA. Plaintiff fully performed its obligations under the School Bus Agreement. The fees for the services rendered under the School Bus Agreement ultimately totaled fifty thousand one hundred and fifty dollars (\$50,150.00). On or about June 2, 2022, Defendant BLKA remitted the first payment in the amount of nineteen thousand seven and fifty dollars (\$19,750.00 USD). Under the School Bus Agreement, Defendant BLKA was contractually obligated to remit an installment payment in the amount of \$4,750.00 USD on June 13, 2022, yet failed to do so. Defendant BLKA remitted a July 14, 2022 payment in the amount of three thousand six hundred dollars (\$3,600.00 USD). Thereafter, Defendant BLKA has not remitted any other payments under the School Bus Agreement.

DISCUSSION

CPLR § 3212(e) permits partial "summary judgment may be granted as to one or more causes of action, or part thereof, in favor of any one or more parties, to the extent warranted, on such terms as may be just." CPLR § 3212(e). The motion shall be granted if, upon all the papers and proof submitted, the cause of action or defense shall be established sufficiently to warrant the court as a matter of law in directing judgment in favor of any party. *Id.* "Mere conclusions, expressions of hope, or unsubstantiated allegations or assertions are insufficient to defeat summary

judgment.” (*Zuckerman v. City of New York*, 49 NY2d 557, 562 [1980]). In *Spearmon v. Times Square Stores Corp.*, the Second Department, explained that:

“It is incumbent upon a defendant who opposes a motion for summary judgment to assemble, lay bare and reveal his proofs, in order to show that the matters set up in his answer are real and are capable of being established upon a trial.”

(96 AD2d 552, 553 [2d Dept 1983] [*quoting Di Sabato v. Soffes*, 9 AD2d 297, 301 [1st Dept 1959]]).

In the instant action, “[t]he essential elements of a cause of action to recover damages for breach of contract are the existence of a contract, the plaintiff’s performance pursuant to the contract, the defendant’s breach of its contractual obligations, and damages resulting from the breach.” (*Meyer v. North Shore-Long Is. Jewish Health Sys., Inc.*, 137 AD3d 878, 879 [2d Dept 2016] [internal citations omitted]). The filed complaint has pled the existence of the parties’ school bus transportation services contract (“School Bus Agreement”), Plaintiff provided said transportation services, Defendant FITMAR MANAGEMENT breached by failing to remit payment in full for the School Bus Agreement which it received, and breach resulted in damages to the Plaintiff.

Furthermore, Plaintiff has submitted “itemized bills, enumerating and identifying the services that it provided” and the [Court deems] those bills sufficient proof of “formation of a contract between the parties, performance by the plaintiff, the defendant’s failure to perform, and resulting damage” (*See Sunblock Sys., Inc. v Marcum, LLP*, 2023 NY Slip Op 31343[U] [Sup Ct, NY County 2023]). As such, this Court find that Plaintiff has made a prima facie showing on its breach of contract claim.

Upon finding for “partial summary judgment” on a “breach of contract claim ... ‘the issue

of the calculation of damages thereon [can] be referred to a Special Referee to hear and determine pursuant to CPLR 4317(b)''' (*Steven J. Kaye Assoc v. Kay*, 2013 NY Slip Op 30849[U] [Sup Ct, NY County 2013]).

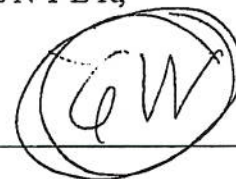
Accordingly, based upon the above, it is

ORDERED that the branch of Plaintiff CHEESE BUS INC.'s motion for partial summary judgment, pursuant to CPLR § 3212(e), for breach of contract is **GRANTED** against Defendant FITMAR MANAGEMENT, LLC in the amount of \$26,800.00 USD together with prejudgment interest from June 13, 2022, and;

ORDERED that the branch of Plaintiff CHEESE BUS INC.'s motion for a hearing pursuant to CPLR § 4317(b) before a Special Referee to determine Plaintiff CHEESE BUS INC.'s lost profits consequential damages, if any, attorney fees, and costs is **GRANTED**.

This constitutes the Decision and Order of the Court.

ENTER,



Hon. Carolyn E. Wade, J.S.C

**HON. CAROLYN E. WADE
JUSTICE OF THE SUPREME COURT**

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