

Sellup, Inc. v Acoustic L.P.

2025 NY Slip Op 30862(U)

March 14, 2025

Supreme Court, New York County

Docket Number: Index No. 651766/2024

Judge: James d'Auguste

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

PRESENT: Hon. James E. d'Auguste PART 55

Justice

-----X

Sellup, Inc. DBA Alchemy Worx,

Plaintiff,

- v -

Acoustic L.P.,

Defendant.

-----X

INDEX NO. 651766/2024
MOTION DATE 05/24/2024
MOTION SEQ. NO. 001

**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, 21 were read on this motion to/for DISMISS DEFENSE.

Plaintiff Sellup, Inc. DBA Alchemy Worx (“Alchemy”) brings a breach of contract lawsuit against defendant Acoustic L.P. (“Acoustic”) alleging that Acoustic retained Alchemy for a mass marketing campaign and then failed to pay for the work that was performed. Alchemy seeks to recover damages for the injuries it sustained from the non-payment. In response, Acoustic asserted breach of contract counterclaims against Alchemy alleging breach of security provisions and for failing to report the incident to Acoustic immediately. Acoustic seeks to recover damages in the total amount of \$405,567.

In Motion Sequence No. 001, Alchemy moves for an order to dismiss Acoustic’s counterclaims under CPLR 3211(a)(1) and (a)(7).¹ Acoustic makes an application to amend its

¹ Although Alchemy does not indicate in its Notice of Motion that it seeks dismissal under CPLR 3211(a)(1), Alchemy has stated as such in its memorandum of law (NYSCEF Doc. No. 12), and the parties have submitted documents in support of their motion papers. Acoustic also does not oppose and treats Alchemy’s motion to have been filed under

Verified Answer to include additional factual allegations pursuant to CPLR 3025(b) and opposes Alchemy's motion to dismiss. For the reasons stated below, the Court partially grants Acoustic's motion to amend its complaint and denies Alchemy's motion to dismiss as moot.

BACKGROUND FACTS AND PROCEDURAL HISTORY

Alchemy is a global marketing company that deploys marketing strategies with specialties in email marketing operations (NYSCEF Doc. No. 19, 5). Acoustic is a software company successor-in-interest of non-party, International Business Machines Corporation ("IBM"), that provides products and tools for its partners (*id.*).

In 2015, Alchemy and IBM entered into agreements, titled Non-Technical Services Agreement ("base agreement"), bearing number 4915015514, and Non-Technical Services Agreement – Statement of Work ("MSOW"), bearing number 4915017223 (together "referenced supplier agreements") (NYSCEF Doc. No. 1, complaint, ¶¶ 8, 10; NYSCEF Doc. Nos. 2-3, complaint exhibits A and B).

IBM then entered into an agreement with Centerbridge Partners L.P. ("Centerbridge") where Centerbridge would acquire IBM's "[m]arketing [p]latform and [c]ommercer [s]oftware [o]fferings," ("products") (NYSCEF Doc. No. 3, p. 1). Under the contract between IBM and Centerbridge, IBM agreed to transfer the products to Acoustic, which were to be majority owned by Centerbridge in 2019 (*id.*).

In 2019, Alchemy entered into an agreement with Acoustic known as the adoption agreement (NYSCEF Doc. No. 1, ¶ 12). In the adoption agreement, Alchemy and Acoustic agreed to incorporate all terms and conditions of the referenced supplier agreements that IBM and Alchemy entered into in 2015 (*id.*, ¶¶ 13-14; *see also* NYSCEF Doc. No. 3, p. 1). The adoption

CPLR 3211(a)(1) and (a)(7) (NYSCEF Doc. No. 19). For all these reasons, the Court deems Alchemy's motion to dismiss to have been filed under both CPLR sections.

agreement provided that it is an agreement solely between Alchemy and Acoustic, that it would have no effect on the referenced supplier agreements between IBM and Alchemy, and IBM is not a party (NYSCEF Doc. No. 3, p. 1). IBM was only to be a third-party beneficiary to sections of the adoption agreement that clarified that IBM is not a party and that the agreement has no effect on existing referenced supplier agreements (*id.*). The adoption agreement further provides that Alchemy consented to IBM's assignment to Acoustic of any unexpired IBM warranty rights under the referenced supplier agreements and in "the event of any inconsistency between the [adoption agreement] and a referenced supplier agreement(s), th[e] [adoption agreement shall have precedence" (*id.*, p. 2).

The base agreement, #4915015514, adopted by the parties, specifically "establishes the basis for multinational procurement relationship under which the supplier, [Alchemy], will provide buyer, [Acoustic] the deliverables and services described in SOWs and/or WAs issued under the base agreement" (NYSCEF Doc. No. 2, p. 1). It defines "agreement" as "this Base Agreement and any relevant Statement of Work ("SOW"), Work Authorizations ("WA"), and other attachments or appendices specifically referenced in this Agreement" (*id.*).

The base agreement contains sections 7.1(10)(a) to 7.1(10)(d), which state in relevant part:

"Supplier makes the following ongoing representations and warranties: . . . "10. it (a) will not use, disclose, or transfer across borders any Personal Data that is processed for Buyer, except to the extent necessary to perform under this Agreement; (b) will comply with all applicable data privacy laws and regulations, (c) will implement and maintain appropriate technical and organizational measures and other protections for the Personal Data, (including, without limitation, not loading any Personal Data provided to Supplier on any laptop computers or any portable storage media that can be removed from Supplier's premises unless, in each case, such data has been encrypted and, in the case of portable storage media, such data is loaded onto portable storage media solely for the purpose of moving such data to off-site storage), (d) will report to Buyer any breaches of security of Personal Data immediately after discovery thereof if the Personal Data was, or could be, accessed, used or acquired by an unauthorized person or compromised in any way" (*id.*, p. 3).

“Personal data” is broadly defined as “any information that may identify an individual” (NYSCEF Doc. No. 2, p. 1)

The base agreement also contains section 12, where it provides in pertinent part:

12.0 . . . “Supplier will: 1. ensure Supplier Personnel are in compliance with all laws, regulations, ordinances, and licensing requirements; 2. be responsible for the supervision, control, compensation, withholdings, health and safety of Supplier Personnel . . .”

12.1(a) “Supplier will ensure that Supplier Personnel assigned to work on Buyer’s or Customer’s premises will not: . . . 4. send or receive non-Buyer related mail through Buyer’s or Customer’s mail system”

12.3 . . . “For purposes of this Subsection, the term “Buyer’s Assets” means information, information assets, information systems, supplies, or other property, including property owned by third parties (such as Buyer customers) that is accessed by Buyer Personnel or provided to Supplier Personnel by (or on behalf of) Buyer. Supplier Personnel will: . . . 2. use Buyer Assets only for purposes of this Agreement and reimburse Buyer for any unauthorized use;”

The base agreement also contains a limitation of liability clause that states in relevant part:

“In no event will either party be liable to the other for any lost revenues, lost profits, incidental, indirect, consequential, special or punitive damages. This mutual Limitation of Liability does not limit the obligations and liability of Supplier provided in the section titled Supplier Liability for Third Party Claims” (*id.*, pp. 4-5).

MSOW # 4915017223, that was also fully incorporated in the parties’ adoption agreement, provides that Alchemy will only perform services “under this SOW upon Alchemy Worx’s receipt of a legally-approved Work Order for each Purchaser [Acoustic] project . . . once an active Work Order is in place to support a Purchaser project, all Purchaser requests submitted through Oneview are eligible for fulfillment under this SOW. . .” (NYSCEF Doc. No. 19, p. 30). The MSOW’s section 3.5 contains an insurance provision that provides in pertinent part:

“Supplier, [Alchemy], shall maintain, at its expense, in effect an insurance policy which shall cover all Supplier costs, including damages . . . which are associated with any Security Breach (as hereafter defined) or loss of Personal Data, regardless of cause (including, without limitation, Supplier negligence or gross negligence and

unlawful third party acts). Costs to be covered by this insurance policy shall include without limitation: (a) costs to notify individuals whose Personal Data was lost or compromised; (b) costs to provide credit monitoring (or similar data protection services) and credit restoration services to individuals whose Personal Data was lost or compromised; (c) costs associated with third party claims arising from the Security Breach or loss of Personal Data, including litigation costs and settlement costs; and (d) any investigation, enforcement or similar miscellaneous costs. Such insurance shall provide coverage for up to \$10,000,000.00 (ten million dollars).

For the purposes of this Section, " Security Breach" means (1) the failure by the Supplier to properly handle, manage, store, destroy or otherwise control, or the unauthorized disclosure by the Supplier of: (a) Personal Data in any format or (b) third party corporate information in any format specifically identified as confidential and protected under a confidentiality agreement or similar contract; (2) an unintentional violation of the Supplier's privacy policy or misappropriation that results in the violation of any applicable data privacy laws or regulations; *or* (3) any other act, error, or omission by Supplier in its capacity as such which is reasonably likely to result in the unauthorized disclosure of Personal Data (or a reasonable belief there has been an unauthorized disclosure). Such insurance must: (a) name Buyer as an additional insured with respect to Buyer's insurable interest; . . . Supplier shall be liable for reimbursing to Buyer the actual costs incurred by Buyer, if any, relating to or arising out of any Security Breach. . . (NYSCEF Doc. No. 19, p. 32).

The MSOW also addresses the interplay between the mutual limitation of liability clause set forth in the base agreement #4915015514 and the security breach clause in the MSOW:

“The parties acknowledge and agree that the costs, if any, incurred by Buyer [Acoustic] in connection with the remediation efforts undertaken by the Buyer as a result of a Security Breach shall be deemed to be direct damages as between the parties. . . *The mutual limitation of liability set forth in the [Base Agreement] shall not apply to losses or claims arising out of or relating to Security Breaches*” (*id.*, p. 33) [emphasis added]).

In 2022, Acoustic sent Alchemy certain statements of work (“SOW”) with requirements for Alchemy to complete in relation to Acoustic’s customers (NYSCEF Doc. No. 1, ¶¶ 15-16). In these statements of work, Acoustic allegedly agreed to pay Alchemy “an upfront fee representing 50 to 60 percent of the hours required to complete the project” (*id.*). Consequently, Acoustic allegedly paid Alchemy the upfront fee throughout 2022 when receiving Alchemy’s invoices (*id.*, ¶ 18).

In January 3, 2023, however, Acoustic allegedly executed and sent Alchemy certain statements of work to support the work activities relating to its numerous customers, including Hyatt Corp. and TJX, Inc. (*id.*, ¶ 19; exhibit C). In these statements of work, Acoustic allegedly agreed to pay the upfront fee, “a minimum fee of 60% of the hours described in th[e] Statements of Work,” to Alchemy (*id.*, ¶¶ 19-20; exhibit C).

One of these statements of work, SOW No. 16, lists the base agreement and the MSOW in the top right-hand corner of the document, and then states in pertinent part above the signatures:

“The undersigned parties agree that they have the right and authority to execute this SOW (*which incorporates by reference the Base Agreement, MSOW and Non-Technical Services Agreement*) and they agree to be bound by the terms and conditions of the Base Agreement, MSOW and SOW and any Attachments hereto or thereto as if the undersigned were the named parties in the Non-Technical Services Agreement” (NYSCEF Doc. No. 4, p. 4 [emphasis added]).

Pursuant to the statements of work and the parties’ course of dealings, Alchemy alleges that it sent Acoustic a few invoices for an upfront fee of \$75,859.60 on October 16, 2023 (NYSCEF Doc. No 1, ¶ 22; exhibit D). Acoustic allegedly failed to pay any of the invoices leaving an outstanding balance of the same, despite its multiple promises of payment (*id.*, ¶ 26).

Acoustic’s Counterclaims

Acoustic alleges that Alchemy did not perform its obligations under SOW No. 16, with an effective date of January 3, 2023, and amendment of SOW No. 8 with an effective date of February 26, 2022 (together “SOWs”) (NYSCEF Doc. No. 7, ¶ 3).

On December 6, 2024, Alchemy notified Acoustic, through an incident report, that “a bad actor” obtained access to four client accounts through an employee’s personal computer, as early as November 22, 2023 (*id.*, ¶ 7). This suspicious activity was not detected by Alchemy until December 1, 2023, when the bad actor replaced legitimate content in planned mailings with Temu and sent said emails (*id.*, ¶¶ 8, 10). Alchemy’s incident report, however, falsely asserted that no

personal identifiable information (“PII”) was accessed, when personal emails are PII (*id.*, ¶¶ 11-12).

In response to Alchemy’s incident report, Acoustic took multiple actions in the span of two weeks to contain the damage caused by the security incident (*id.*, ¶¶ 13-14). Specifically, Acoustic spent approximately 340 hours at an average rate of \$250 per hour to contain the incident, spending approximately \$85,000 (*id.*, ¶¶ 17-18). Acoustic also spent \$3,567 to pay its vendors for the unauthorized emails that were sent by the bad actor, via Alchemy’s employee’s computer (*id.*, ¶¶ 19-20). As a result of the security incident, Acoustic also lost one of its customers who accelerated its timeline to exit from Acoustic’s software platform, costing Acoustic a loss of over \$76,000, and put Acoustic at risk of losing another customer, who was directly affected by the security incident by Alchemy, for a total revenue loss of \$241,000 (*id.*, ¶¶ 21-22). Alchemy breached its contract with Acoustic, specifically subsections sections 7.1(10)(a) to 7.1(10)(d) and sections 12.0(1) to 12.0(2), Section 12.1(a)(4) and Section 12.3(2) of the base agreement.

Specifically, Alchemy breached subsections 7.1(10)(a) to 7.1(10)(d) because: its employee used and disclosed customers’ PII; it failed to comply with applicable data privacy laws and regulations; it failed to maintain appropriate technical and organizational measures and other protections for customers’ personal data; it failed to immediately report the incident; and it failed to ensure its personnel were in compliance with privacy and security laws and regulations (*id.*, ¶¶ 23, 26, 29, 32).

As to sections 12.0(1) to 12.0(2), 12.1(a)(4) and 12.3(2) of the base agreement, Alchemy failed to ensure its personnel were in compliance with privacy and security regulations laws; it did not properly supervise or control its personnel; its employees sent unauthorized emails from customers’ mail system, as admitted in the incident report, and its personnel used Acoustic’s assets

for unauthorized use (*id.*, ¶¶ 35, 38, 41, 44). For all these reasons, Acoustic suffered damages in the total amount of \$405,567.

Procedural Posture

Alchemy filed this breach of contract lawsuit on April 5, 2024, and Acoustic filed its Answer and counterclaims on May 9, 2024.

Alchemy then filed the instant motion to dismiss Acoustic's counterclaims on May 24, 2024, and Acoustic opposed the motion and made an application to amend its counterclaims on August 23, 2024. In support of its opposition and motion to amend, Acoustic submitted an affidavit from Danielle Gordon ("Gordon affidavit"), a senior counsel, who has been an employee of Acoustic since 2020 (NYSCEF Doc. No. 19, exhibit A).

DISCUSSION

A. Acoustic's Cross-Motion to Amend

1. Parties' Contentions and Acoustic's Proposed Amended Answer

Acoustic argues that the Court should grant Acoustic's motion for leave to amend its answer to add factual allegations as to the security incident claim, to amend its affirmative defenses, and to add a claim of breach of implied covenant of good faith and fair dealing. Acoustic argues that the amendment would not prejudice, nor surprise Alchemy and it would not be devoid of merit.

In its proposed amended answer, Acoustic alleges that the counterclaims arise out of Alchemy's breach of certain provisions of their contract resulting in substantial direct damages to Acoustic (NYSCEF Doc. No. 19, exhibit B, proposed amended answer, ¶ 7). Acoustic adds factual allegations and states that in December 2023 it was made aware that Alchemy lacked sufficient and appropriate security measures and operational practices, despite the agreement provisions and

the parties' course of dealings (*id.*, ¶ 7). This breach allowed a bad actor to obtain and misuse Acoustic's products and disclose its customer's personal data by using Alchemy's employee's personal laptop and unique username and password (*id.*). Acoustic alleges that Alchemy's security breach was in violation of sections 7.0, 7.1(6) – (7) and (10)(a) – (d), 12.0(1) - (2), 12.1(a)(4) – (6), 12.3(2) of the base agreement.²

Acoustic further alleges that Alchemy breached its duties under section 3.5 of the MSOW, as well, because Alchemy was to maintain, at its expense, an insurance policy that covers all of Acoustic's costs associated with any security breach or loss of personal data regardless of the cause (*id.*, ¶¶ 25, 35-36). Acoustic further alleges that section 3.5 of the MSOW expressly states that the mutual limitation liability set out in the base agreement does not apply to the losses and claims arising out of or relating to a security breach (*id.*, ¶ 25). Finally, Acoustic alleges that SOW No. 16, which is at issue in this case, adopted and incorporated the base agreement and the MSOW (*id.*, ¶ 26). Considering all these facts and the allegations in the proposed amended answer, Acoustic argues that Alchemy is liable to Acoustic for breach of contract for all the damages it sustained as a result of the security incident, and Alchemy is also liable for a breach of the implied covenant of good faith and fair dealing.

Alchemy opposes Acoustic's motion for leave to amend its answer on the grounds that it is futile and lacks merit. Specifically, Alchemy argues that the MSOW does not apply to Acoustic's counterclaim because it lacks the factual connection to the work Alchemy had to perform under SOW No. 16, as the clients for each agreement were different. Alchemy further challenges the effect of the MSOW on SOW No. 16 by arguing that it was executed in 2015 by

² The Court will overlook Acoustic's failure to supply a redlined proposed amended pleading as a technical defect, since the same allegations were emphasized in Acoustic's counsel's affirmation in the moving papers (*see Berkeley Research Group, LLC v FTI Consulting, Inc.*, 157 AD3d 486, 490 [1st Dept 2018]).

Alchemy, it expired in 2018, and IBM never signed it. Alchemy further contends that the language in SOW No. 16 does not expressly incorporate the provisions in the MSOW.

Further, Alchemy argues that the Gordon affidavit should not be considered as to the MSOW because she has worked for Acoustic since 2020 and fails to indicate her specific knowledge as to the MSOW, which Alchemy argues expired prior to Gordon's employment. In any event, Alchemy argues that Acoustic's allegations do not meet the security breach definition under the MSOW because it is not "personal data," and Acoustic does not allege that any personal identifying information was accessed or accessible.

2. Relevant Law

"Whether to grant the amendment is committed to the court's discretion" (*Heller v Louis Provenzano, Inc.*, 303 AD2d 20, 22 [1st Dept 2003]). A motion for leave to amend is governed by CPLR 3025(b), which provides in pertinent part:

"[a] party may amend his or her pleading, or supplement it by setting forth additional or subsequent transactions or occurrences, at any time by leave of court . . . leave shall be freely given . . . [and] any motion to amend or supplement pleading shall be accompanied by the proposed amended or supplemental pleading clearly showing the changes or additions to be made to the pleading" (CPLR 3025[b]).

"It is [thus] well settled that '[a] request for leave to amend a [pleading] should be freely given, and denied only if there is prejudice or surprise resulting directly from the delay, or if the proposed amendment is palpably . . . insufficient," (*LDIR, LLC v DB Structured Prods, Inc.*, 172 AD3d 1, 4 [1st Dept 2019]), or "devoid of merit" (*Brummer v Wey*, 187 AD3d 566, 567 [1st Dept 2020]; see also *MBIA Ins. Corp. v Greystone & Co., Inc.*, 74 AD3d 499, 499 [1st Dept 2010]).

To prevail on a cause of action for breach of contract, a plaintiff must prove: (1) the existence of a contract, (2) plaintiff's performance thereunder, (3) the defendant's breach, and (4) resulting damages (*Harris v Seward Park Hous. Corp.*, 79 AD3d 425, 426 [1st Dept 2010]). "In

cases of contract interpretation, it is well settled that ‘when parties set down their agreement in a clear, complete document, their writing should . . . be enforced according to its terms’” (*South Rd. Assoc., LLC v International Bus. Machs. Corp.*, 4 NY3d 272, 277 [2005] [citations omitted]). “The best evidence of what parties to a written agreement intend is what they say in writing” (see *Greenfield v Philles Records*, 98 NY2d 562, 569 [2002] [citations omitted]).

“[A]ll contracts imply a covenant of good faith and fair dealing in the course of performance . . . embrac[ing] a pledge that ‘neither party shall do anything which will have the effect of destroying or injuring the right of the other party to receive the fruits of the contract’” (*111 W. 232nd Owners Corp. v Jennifer Realty Co.*, 98 NY2d 144, 153 [2002]; see also *AEA Middle Mkt. Debt Funding LLC v Marblegate Asset Mgt., LLC*, 214 AD3d 111, 132 [1st Dept 2023]).

“Where a cause of action for breach of the implied covenant of good faith and fair dealing is based on the same operative facts and seeks the same damages as a cause of action for breach of contract, the good faith claim is duplicative and should be dismissed . . . A good faith claim, however, is not duplicative of a breach of contract claim where the complaint alleges conduct that is separate from the conduct constituting the alleged breach of contract and such conduct deprived the other party of the benefit of its bargain”

(*AEA Middle Mkt. Debt Funding LLC*, 214 AD3d at 132-133).

3. Analysis

Applying the law to the facts at hand, Acoustic’s proposed amended crossclaim for breach of contract against Alchemy is not so “patently insufficient” on its face as to warrant denial. Acoustic’s allegations in the proposed amended counterclaim for breach of contract “put [Alchemy] on notice of the transactions and occurrences that were the subject of [Acoustic’s] proposed” amended answer and the counterclaims (*Lazar v Mor*, 2025 NY Slip Op 00630 [1st Dept Feb. 4, 2025]). Acoustic specifically alleges that it entered into an adoption agreement with Alchemy where the terms of the base agreement and the MSOW were fully incorporated. Acoustic

further alleges that Alchemy breached multiple sections of the base agreement and section 3.5 of the MSOW because Alchemy failed to implement sufficient and appropriate security measures and operational practices, despite the agreement provisions and the parties' course of dealings. This breach, Acoustic alleges, enabled a bad actor to obtain and misuse Acoustic's products and disclose its customer's personal data, which is broadly defined in the base contract. Acoustic's proposed amended counterclaim for breach of contract, thus, puts Alchemy on notice of the specific contract provisions that were allegedly breached by Alchemy and how.

Acoustic's proposed crossclaim for breach of contract is also not devoid of merit. Alchemy does not challenge the accuracy of the content of the MSOW that was submitted by Acoustic through the Gordon affidavit. It merely argues that the MSOW does not apply to the work in SOW No. 16, that the MSOW was not in effect at the time of the security incident, and that the MSOW and SOW No. 16 involved work for different clients. The case record, however, shows that the parties explicitly incorporated the MSOW and the base agreement in both their adoption agreement and SOW No. 16 (*see* NYSCEF Doc. No. 4, p. 4). SOW No. 16 also lists the MSOW and the base agreement on the top right-hand corner of the document, further demonstrating some relationship between all the contracts. Additionally, section 3.5 of the MSOW explicitly states that the mutual limitation of liability does not apply to losses or costs arising out of or relating to security breaches, and thus would not bar the counterclaims alleged by Acoustic. Alchemy has not demonstrated that Acoustic's counterclaim for breach of contract in its proposed amended answer is palpably improper or insufficient as a matter of law, or futile/devoid of merit. "A party opposing leave to amend must overcome a heavy presumption of validity in favor of [permitting amendment]" (*LDIR, LLC*, 172 AD3d at 4 [citations omitted]).

However, the Court denies Acoustic's motion for leave to add the counterclaim for breach of the covenant of good faith and fair dealing, as "duplicative of its contract claim" (*Ria R Squared, Inc. v DW Partners, LP*, 230 AD3d 983, 985 [1st Dept 2024]). The proposed amended counterclaims "arise from the same facts" (*Amcan Holdings, Inc. v Canadian Imperial Bank of Commerce*, 70 AD3d 423, 426 [1st Dept 2010]; *see also AEA Middle Mkt. Debt Funding LLC*, 214 AD3d at 133).

For all these reasons, Acoustic's motion to amend its answer is granted in part and denied in part.

4. Alchemy's Motion to Dismiss

Because Acoustic's motion for leave to amend is partially granted, Alchemy's motion to dismiss is denied as moot.

CONCLUSION and ORDER

Accordingly, it is hereby

ORDERED that the defendant Acoustic L.P.'s motion for leave to amend the answer is granted, in part, as follows: leave is granted to amend the defenses, the factual allegations, and the cause of action for breach of contract only, and to this extent, the proposed amended complaint in the form annexed to the moving papers shall be deemed served upon service of a copy of this order with notice of entry; and it is further

ORDERED that leave to amend the answer is denied with respect to the proposed second cause of action for breach of the covenant of good faith and fair dealing and that cause of action is stricken; and it is further

ORDERED that plaintiff Sellup, Inc. DBA Alchemy Worx shall answer the amended counterclaim or otherwise respond thereto within 20 days from the date of said service; and it is further

ORDERED that plaintiff Sellup, Inc. DBA Alchemy Worx’s motion to dismiss defendant Acoustic’s counterclaims for breach of contract is denied as moot.

This constitutes the decision and order of the Court.

3/14/2025
DATE


James d’Auguste, 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