

**Highmark NY LLC v AMK Mech. Ltd.**

2025 NY Slip Op 31344(U)

April 11, 2025

Supreme Court, New York County

Docket Number: Index No. 652424/2024

Judge: Nicholas W. Moyne

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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. NICHOLAS W. MOYNE **PART** **41M**

*Justice*

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HIGHMARK NY LLC

Plaintiff,

- v -

AMK MECHANICAL LTD.,

Defendant.

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**INDEX NO.** 652424/2024

**MOTION DATE** 08/15/2024

**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

were read on this motion to/for DISMISS.

Upon the foregoing documents, it is

Plaintiff, Highmark NY, LLC (“Highmark”), commenced the underlying action against defendant, AMK Mechanical LTD. (“AMK”), to recover amounts allegedly outstanding for the purchase and/or delivery of equipment, and asserting causes of action for: (1) breach of contract; (2) unjust enrichment; (3) account stated; and (4) quantum meruit.

In Motion Sequence 001, AMK moves for an order, pursuant to CPLR §§ 3211(a)(1) and (a)(7), dismissing the complaint as the claims are contradicted by documentary evidence and are duplicative. For the reasons set forth below, the motion is granted in part and otherwise denied.

On a CPLR § 3211 motion to dismiss, a court must “accept the facts as alleged in the complaint as true, accord plaintiffs the benefit of every possible favorable inference, and determine only whether the facts as alleged fit within any cognizable legal theory” (*Seaman v Schulte Roth & Zabel LLP*, 176 AD3d 538, 538 [1st Dept 2019]). Under CPLR § 3211(a)(1), a dismissal is warranted only if “the documentary evidence utterly refutes plaintiff’s factual allegations, conclusively establishing a defense as a matter of law” (*Xu v Van Zwiennen*, 212

AD3d 872, 874 [2d Dept 2023], quoting *Goshen v Mut. Life Ins. Co. of New York*, 98 NY2d 314, 326 [2002]). “Thus, defendant bears the burden of demonstrating that the proffered correspondence conclusively refutes plaintiff’s factual allegations” (*Kolchins v Evolution Markets, Inc.*, 31 NY3d 100, 106 [2018]).

AMK has failed to offer any evidence, let alone documentary evidence, in support of its’ motion. Instead, AMK relies on an affirmation by its’ counsel which neither constitutes documentary evidence nor is sufficient to utterly refute the plaintiff’s allegations or conclusively establish a defense as a matter of law, as required under CPLR § 3211(a)(1) (*Cartagena v Volotsenko*, 232 AD3d 409, 409 [1st Dept 2024]; *JD2 Realty Mgt. LLC v Evojets LLC*, 221 AD3d 407, 408 [1st Dept 2023]; *Mamoon v Dot Net Inc.*, 135 AD3d 656, 657 [1st Dept 2016]).

Nonetheless, AMK also asserts that the plaintiff’s four causes of action must be dismissed as they are duplicative and contradictory. A CPLR § 3211 (a)(7) motion may be used to test the facial sufficiency of a pleading in two different ways: (1) the motion may be used to dispose of an action in which the plaintiff has not stated a claim cognizable at law; or (2) the motion may be used to dispose of an action in which the plaintiff identified a cognizable cause of action but failed to assert a material allegation necessary to support the cause of action (*Basis Yield Alpha Fund (Master) v Goldman Sachs Group, Inc.*, 115 AD3d 128, 134 [1st Dept 2014]). “When documentary evidence is submitted by a defendant ‘the standard morphs from whether the plaintiff has stated a cause of action to whether it has one’ ...if the defendant’s evidence establishes that the plaintiff has no cause of action (i.e., that a well-pleaded cognizable claim is flatly rejected by the documentary evidence), dismissal would be appropriate” (*Id.* at 137, internal citations omitted).

Here, plaintiff has sufficiently alleged a claim for both breach of contract involving the sale and delivery of goods and account stated. Pleading a breach of contract claim includes the existence of a contract, the plaintiff's performance thereunder, the defendant's breach thereof, and resulting damages (*Fawer v Shipkevich PLLC*, 213 AD3d 408, 408 [1st Dept 2023]). Plaintiff has sufficiently alleged that the parties entered into a contract in which Highmark sold equipment to defendant, the equipment was delivered by air freight as requested by AMK, AMK was obligated to pay for the equipment and goods, but has failed to pay the outstanding balance (*see ED & F Man Sugar Inc., etc. v ZZY Distributors, Inc., etc., et al.*, 181 AD3d 463 [1st Dept 2020]; *Perine Intern. Inc. v Bedford Clothiers, Inc.*, 143 AD3d 491, 492 [1st Dept 2016]; *Wellington Farms of Massachusetts, Inc. v Capital Area Food Bank*, 156 AD3d 662, 664 [2d Dept 2017]). Plaintiff has adequately pled an account stated claim, alleging that it sent invoices to AMK and AMK retained them without objection for a reasonable time thereafter (*Anderson Kill, P.C. v Bd. of Managers of Honto 88 Condominium*, 192 AD3d 551 [1st Dept 2021]).

As to the plaintiff's unjust enrichment and quantum meruit claims, AMK contends the quasi-contract claims should be dismissed. The quantum meruit claim should be dismissed as it is based on the same subject matter governed by an agreement existing between the parties (*see Globalx, Inc. v Hogwarts Capital, LLC*, 226 AD3d 535, 537 [1st Dept 2024]; *Hudson Ins. Co., Inc. v City of New York*, 170 AD3d 622, 623 [1st Dept 2019]). An unjust enrichment claim "lies as a quasi-contract claim and contemplates an obligation imposed by equity to prevent injustice, in the absence of an actual agreement between the parties" (*Columbia Mem. Hosp. v Hinds*, 38 NY3d 253, 275 [2022] [internal quotations omitted]). As plaintiff has plead the existence of an agreement, the unjust enrichment claim must similarly be dismissed (*MREF REIT Lender LLC v FPG Maiden Holdings LLC*, 233 AD3d 482, 486 [1st Dept 2024]; *2497 Realty Corp. v Fuertes*,

232 AD3d 451, 454 [1st Dept 2024]; *Is. Stars 21 Inc. v Buccaria*, 221 AD3d 531, 532 [1st Dept 2023]).


Accordingly, it is hereby

ORDERED that the motion to dismiss is GRANTED IN PART, to the extent that the second and fourth causes of action in the complaint are dismissed; and it is further

ORDERED that defendant is directed to serve an answer to the complaint within 20 days after service of a copy of this order with notice of entry; and it is further

ORDERED that counsel are directed to appear for a preliminary conference in Room 327, 80 Centre Street, New York, New York, on August 7, 2025, at 2:15 PM.

This constitutes the decision and order of the court.

  
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<u>4/11/2025</u> DATE			<u>NICHOLAS W. MOYNE, J.S.C.</u>
CHECK ONE:	<input type="checkbox"/> CASE DISPOSED	<input type="checkbox"/> DENIED	<input checked="" type="checkbox"/> NON-FINAL DISPOSITION
APPLICATION:	<input type="checkbox"/> GRANTED		<input checked="" type="checkbox"/> GRANTED IN PART
CHECK IF APPROPRIATE:	<input type="checkbox"/> SETTLE ORDER		<input type="checkbox"/> OTHER
	<input type="checkbox"/> INCLUDES TRANSFER/REASSIGN		<input type="checkbox"/> FIDUCIARY APPOINTMENT
			<input type="checkbox"/> REFERENCE