

**New Legend Debt by Meitav Dash L.P. v Sam & Kate
Prod., LLC**

2025 NY Slip Op 31368(U)

April 11, 2025

Supreme Court, New York County

Docket Number: Index No. 655485/2023

Judge: Margaret A. Chan

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SUPREME COURT OF THE STATE OF NEW YORK
 COUNTY OF NEW YORK: COMMERCIAL DIVISION PART 49M

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NEW LEGEND DEBT BY MEITAV DASH LIMITED PARTNERSHIP, Plaintiff, - v - SAM & KATE PRODUCTION, LLC, THOMASVILLE PICTURES, LLC, Defendants.	<table border="0"> <tr> <td style="padding-right: 10px;">INDEX NO.</td> <td style="border-bottom: 1px solid black;">655485/2023</td> </tr> <tr> <td style="padding-right: 10px;">MOTION DATE</td> <td style="border-bottom: 1px solid black;">10/28/2024, 12/10/2024</td> </tr> <tr> <td style="padding-right: 10px;">MOTION SEQ. NO.</td> <td style="border-bottom: 1px solid black;">MS 004 005</td> </tr> </table> <p style="text-align: center;">DECISION + ORDER ON MOTION</p>	INDEX NO.	655485/2023	MOTION DATE	10/28/2024, 12/10/2024	MOTION SEQ. NO.	MS 004 005
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HON. MARGARET A. CHAN:

The following e-filed documents, listed by NYSCEF document number (Motion 004) 60, 61, 62, 63, 64, 65, 66, 68, 69
 were read on this motion to/for DISMISS

The following e-filed documents, listed by NYSCEF document number (Motion 005) 70, 71, 72, 73, 74, 75, 76, 77, 78, 79, 80, 83, 84, 85, 86, 87, 88, 89
 were read on this motion to/for SUMMARY JUDGMENT(AFTER JOINDER

In this action arising out of a contract to finance a movie, plaintiff New Legend Debt by Meitav Dash Limited Partnership brings two separate motions. In MS 004, plaintiff moves to dismiss defendant Sam & Kate Production, LLC's (SNK) Counterclaim for Fraudulent Inducement pursuant to CPLR 3211(a)(7). In MS 005, plaintiff files a pre-discovery motion for summary judgment under CPLR 3212 on its First Cause of Action for Breach of Contract against defendants SNK and Thomasville Pictures LLC (TPL, and together with SNK, defendants) and for attorneys' fees. Both motions are opposed.

For the reasons below, both motions are granted. These motions (MS 004 and 005) therefore dispose of this case.¹

¹ All the other defendants and causes of action were previously dismissed by this court's Decision and Order dated June 12, 2024, resolving MS 001 and MS 002 (see NYSCEF #s 41-42, Decision & Order dated June 12, 2024); MS 003 was plaintiff's motion to dismiss SNK's counterclaim, which was denied as moot as SNK submitted an amended answer and counterclaim (NYSCEF # 81 – Order dated December 12, 2024). The remaining cause of action in plaintiff's complaint is for breach of contract against the two remaining defendants, SNK and TPL.

Plaintiff's Motion to Dismiss Defendant SNK's Counterclaim for Fraud²

Defendant Sam & Kate Production, LLC (SNK) is a Brooklyn based film production company; plaintiff is an "Israeli Partnership" (NYSCEF # 59, SNK amended answer & counterclaims ¶¶ 98-99). At all relevant times, SNK was producing a film titled "Sam & Kate" (the Film) starring Dustin Hoffman and Sissy Spacek (*see id.* ¶ 101; *see also* NYSCEF # 1, Summons & Complaint, ¶ 17).

SNK alleges that "[i]n late 2021, plaintiff and SNK began discussing a lending facility in order to finance" the Film (NYSCEF # 59 ¶ 101). SNK needed to submit proof of the finalized lend facility before the end of "principal photography" in order to apply for a specific tax credit from the State of Georgia³ worth \$900,000 (Tax Credit) (*id.* ¶¶ 103, 105-107). SNK alleges that plaintiff knew this and knew that principal photography was scheduled to end March 25, 2022, meaning they needed to close before then to apply for the Tax Credit (*id.* ¶¶ 102-107).⁴

SNK made an unsuccessful application for the Tax Credit in early March 2022, just three weeks prior to the end of principal photography. Specifically, on March 4, 2022, SNK used a "nonbinding commitment letter" from plaintiff to try to apply for the Tax Credit (*id.* ¶¶ 108-110). Three days later on March 7, "the Georgia tax authority rejected the application because the commitment letter was nonbinding" (*id.* ¶ 111). However, the rejection also stated that that SNK could apply again prior to the end of principal photography (*id.* ¶¶ 112-113). SNK alleges that "[t]he rejection was subsequently sent to James Lejsek, [p]laintiff's agent, on March 7, 2022, and Lejsek confirmed receipt of same" (*id.* ¶ 114).

Over the next thirteen days between March 8 and March 21, SNK "repeatedly requested a binding commitment letter from [p]laintiff" so that another application could be made to obtain the Tax Credit before the End of Principal Photography" (*id.* ¶ 115). SNK also "repeatedly advised [p]laintiff" during this time "that the application . . . must be made prior to the End of Principal Photography" (*id.* ¶ 116).

SNK alleges that during those same thirteen days, plaintiff "repeatedly advised and intentionally misrepresented that a binding document would be provided so that the Tax Credit application could be made" (*id.* ¶ 117). SNK does not allege what the misrepresentations were, who made them, or when specifically, they were made. However, SNK alleges that "[i]n the absence of such representations, the filming schedule would have been adjusted and/or a different

² Unless otherwise stated, all facts for the motion to dismiss are taken from SNK's Amended Answer with Counterclaims (NYSCEF # 59, Amended Answer with Counterclaims, ¶¶ 98-136), and are presumed true for the purposes of this motion.

³ "Rule 159-1-1-.04 of the Georgia Department of Revenue" (*id.* ¶ 103).

⁴ Although these facts are accepted as true for the purpose of the motion to dismiss, plaintiff disputes its knowledge in the summary judgment motion discussed below.

lender secured so that the Georgia Tax Credit could be obtained” (*id.* ¶ 118). SNK thus alleges that it “reasonably relied on [p]laintiff’s representation . . . [by] continu[ing] producing the film” (*id.* ¶¶ 118-119).

Despite alleging that plaintiff “*misrepresented* that a binding document would be provided” (*id.* ¶ 117 [emphasis added]), SNK claims that “[o]n March 22, 2022, [p]laintiff provided SNK with a draft Loan and Security Agreement” (LSA)—three days before the end of principal photography (*id.* ¶ 120). SNK claims it “immediately” sent plaintiff a “redline of the LSA on March 23, 2022” (*id.* ¶ 121). SNK does not make any allegations about when or whether plaintiff returned redline edits.

SNK states that the principal photography ended as scheduled on March 25, 2022, but that plaintiff “intentionally refused to sign the LSA until April 1, 2022” (*id.* ¶¶ 123-124). However, in support of this motion, plaintiff submitted the executed and notarized version of the LSA with a promissory note (Note) (*see* NYSCEF # 66, Executed LSA & Note, at 11-15). Both defendants signed the LSA & Note, but the notarization on the Note only indicates that SNK did not sign it until March 30, 2022, five days after principal photography ended (*id.* at 15). All other signatures were undated, although the LSA and Note have an effective date as March 22, 2022 (*id.* at 1, 15).

Regardless of the unclear timing of the Note’s signing, SNK alleges that it made a “final application” for the Tax Credit on April 8, 2022, a week after plaintiff allegedly signed and exactly two weeks after principal photography ended (NYSCEF # 59 ¶ 125). The Georgia tax authority rejected the application on April 19, 2022, because it was made after the end of principal photography (*id.*).

On October 11, 2024, SNK filed the Amended Answer with a Counterclaim for fraudulent inducement (*see generally id.*). SNK claims that “[a]s inducement for SNK to contract with [p]laintiff, [p]laintiff fraudulently promised that a binding agreement would be forthcoming so that the Tax Credit application could be made” (*id.* ¶ 129). SNK claims these misrepresentations were “false when made,” “material” and “made specifically with the purpose of inducing [d]efendant to continue filming and to contract with [p]laintiff for film financing” (*id.* ¶¶ 130-132). SNK claims that it “justifiably relied on the above misrepresentations in continuing to await a binding document from [p]laintiff and not another lender” and by not adjusting the filming schedule (*id.* ¶¶ 134-135).

In MS 004, plaintiff moves to dismiss defendants’ counterclaim for failure to state a claim pursuant to CPLR 3211(a)(7) (NYSCEF # 61, Plt’f’s MOL). Plaintiff argues that SNK fails to plead fraud with particularity as required under CPLR 3016(b) and as barred by an integration clause in the LSA (*id.* at 3-7). Plaintiff also argues that “SNK’s Math Does Not Work” because SNK signed the LSA on March 30, 2022, five days after the end of principal photography, and presumably is

therefore responsible for its own failed application (*id.* at 8, citing NYSCEF # 66 at 15).

SNK opposes, first arguing that plaintiff may not submit documentary evidence on a CPLR 3211(a)(7) motion (NYSCEF # 68, SNK Opp, at 3). SNK next argues it adequately stated fraud with particularity because (a) it “specifically identified James Lejsek as plaintiff’s representative who [SNK] was working with and that made the misrepresentations,” and (b) it “alleges specifically when the misrepresentations were made, to wit, between March 8, 2022 and March 21, 2022” (*id.* at 4- 5). SNK also adds in a footnote that there were “at least nine phone calls” between the parties during the relevant time-period relating to the Tax Credit (*id.* at 2 n 4). SNK also argues that it does not matter that SNK signed the LSA late or at all, as any promise that the LSA was forthcoming was “collateral to the contract” (*id.* at 4, quoting *First Bank of Americas v Motor Car Funding, Inc.*, 257 AD2d 287, 291-292 [1st Dept 1999]). Finally, SNK posits that the integration clause does not bar the counterclaim for fraudulent inducement because it “does not contain explicit anti-reliance representations” or other provisions indicating no other outside promises were considered (*id.* at 5, citing *FCRC Modular, LLC v Skanska Modular LLC*, 2016 NY Slip Op 31494[U] [Sup Ct, NY County 2016]).

Plaintiff replies that documentary evidence is permissible on a CPLR 3211(a)(7) motion, pointing to various cases across New York (NYSCEF # 69, MTD Reply, at 2-3). Plaintiff claims that by referring to Lejsek and the nine phone calls, SNK seemingly attempts to amend its counterclaim, which is impermissible without an affidavit on a motion to dismiss (*id.* at 4). Finally, plaintiff argues that the alleged misrepresentations are in fact illusory “agreements to agree,” which are not contracts (*id.* at 5, citing *DCR Mortg. VI Sub I, LLC v Peoples United Fin., Inc.*, 148 AD3d 986, 987-988 [2d Dept 2017]).

Discussion (MS 004)

On a motion to dismiss a counterclaim for failure to state a cause of action pursuant to CPLR 3211 (a)(7), the court must “accept the facts as alleged in the [answer and counterclaim] as true, accord [defendants] the benefit of every possible favorable inference,” and “determine only whether the facts as alleged fit into any cognizable legal theory” (*Siegmund Strauss, Inc. v E. 149th Realty Corp.*, 104 AD3d 401, 403 [1st Dept 2013]). Significantly, “whether [defendant] . . . can ultimately establish its allegations is not taken into consideration in determining a motion to dismiss” (*Phillips S. Beach LLC v ZC Specialty Ins. Co.*, 55 AD3d 493, 497 [1st Dept 2008], *lv denied* 12 NY3d 713 [2009]).

As an initial matter, contrary to SNK’s contention that plaintiff is not permitted to submit documentary evidence on a motion to dismiss for failure to state a cause of action under CPLR 3211(a)(7), the First Department in July 2024 – months before this motion was filed – explained as “well-established” that:

“[a movant] can submit evidence, such as affidavits or testimony, in support of a CPLR 3211(a)(7) motion attacking a well-pleaded cognizable claim; that doing so changes the CPLR 3211 inquiry from whether the pleader has *stated* a cause of action to whether the pleader *has* a cause of action amenable to relief, or whether the [movant] has a complete defense to the claims; and that such evidence must conclusively establish a defense to [pleader’s] claims as a matter of law”

(*Holder v Jacob*, 231 AD3d 78, 87 [1st Dept 2024] [emphasis in original] [internal quotes and citations omitted]). Thus, plaintiff’s documentary evidence is accepted.

SNK claims that it was fraudulently induced to enter the LSA rather than find other lenders or move the end of principal photography because plaintiff falsely misrepresented that a binding agreement would be sent in time to apply for the Georgia Tax Credit.

“To state a claim for fraudulent inducement, there must be a knowing misrepresentation of material present fact, which is intended to deceive another party and induce that party to act on it, resulting in injury” (*Gosmile, Inc. v Levine*, 81 AD3d 77, 81 [1st Dept 2010]). Fraud-based claims must satisfy the “more stringent” pleading requirements of CPLR 3016(b), which require that “circumstances constituting the wrong shall be stated in detail,” also known as the particularity requirement (*see Swersky v Dreyer and Traub*, 219 AD2d 321, 326 [1st Dept 1996], citing *Ambassador Factors v Kandel & Co.*, 215 AD2d 305, 307-308 [1st Dept 1995]). Thus, allegations of “specific facts with respect to the time, place, or manner of th[e] purported misrepresentation” is needed (*see CMB Export Infrastructure Inv. Group 48, LP v Motcomb Estates, Ltd*, 223 AD3d 513, 514 [1st Dept 2024]). Although this pleading requirement should “not be confused with [requiring] unassailable proof of fraud,” the facts alleged still must be “sufficient to permit a reasonable inference of the alleged conduct” (*see Pludeman v N. Leasing Sys., Inc.*, 10 NY3d 486, 492 [2008]).

SNK’s counterclaim must be dismissed for lack of particularity. SNK’s only allegation of a misrepresentation is the conclusory allegation “between March 8, 2022 and March 21, 2022, [p]laintiff repeatedly advised and intentionally misrepresented that a binding document would be provided so that the Tax Credit application could be made” (NYSCEF # 59 ¶ 117). This allegation does not specify who made the misrepresentations, when they were made, or even what those misrepresentations were, and is thus insufficient to state a claim for fraud (*see Murphy v Kozlowska*, 217 AD3d 455, 455 [1st Dept 2023] [affirming dismissal of fraud-based claim as insufficiently pleaded “because they do not identify any misrepresentation made by defendants”]).

In response, SNK argues that the pleadings “specifically identified James Lejsek as the [p]laintiff representative who [SNK] was working with and that made the misrepresentation” (NYSCEF # 68 at 7). The allegation in question, however, merely says that the March 7, 2022 rejection of SNK’s original Tax Credit application “was subsequently sent to James Lejsek, [p]laintiff’s agent, on March 7, 2022, and Lejsek confirmed receipt of same” (NYSCEF # 59 ¶ 114). Lejsek’s name is not mentioned anywhere else in the counterclaims (*see generally id.*). This allegation does not put plaintiff on notice that Lejsek made the alleged misrepresentations, and even if it did, there is still no indication of what those statements were or when specifically made (*cf. El Entertainment U.S. LP v Real Talk Entertainment, Inc.*, 85 AD3d 561, 562 [1st Dept 2011] [upholding fraud claim where “complaint state(d) who made the misrepresentation to whom, the date the misrepresentation was made, and its content”]). Similarly, SNK’s new allegation asserting the parties had “nine phone calls” during the relevant time-period does not meaningfully address these defects.

Even if SNK had given sufficient details, however, the allegations themselves show that there were no misrepresentations. SNK alleges that “[o]n March 22, 2022, [p]laintiff provided SNK with a draft [LSA],” and fully executed the LSA on April 1, 2022 (NYSCEF # 59 ¶¶ 120, 124). In other words, plaintiff “repeatedly advised . . . that a binding document would be provided,” and then did indeed provide a binding document. Promising to do something and then actually doing it is not fraud.

To the extent SNK argues that plaintiff misrepresented the “binding document would be provided *so that the Tax Credit application could be made*” (*id.* ¶ 117 [emphasis added]), there is still no misrepresentation. Plaintiff allegedly sent the first LSA on March 22, 2022, three days before the end of principal photography (*id.* ¶ 120). The only reasonable inference is that plaintiff fully intended the parties to sign and execute the LSA before March 25, 2022, meaning their alleged promise to send a binding document in time to apply for the Tax Credit was truthful.

SNK further argues that it does not matter whether they eventually signed the LSA because a fraudulent inducement claim can be based on allegations of “a misrepresentation of present fact[] [that] is collateral to the contract (though it may have induced [SNK] to sign the contract)” (NYSCEF # 68 at 4, quoting *First Bank of Americas v Motor Car Funding, Inc.*, 257 AD2d 287, 291-292 [1st Dept 1999]). But *First Bank*, upon which SNK relies, involves a party who intentionally misrepresented that various individual loans satisfied certain warranties in order to convince the other side to purchase those loans (*First Bank*, 257 AD2d at 292). By contrast, here, SNK alleges only that plaintiff promised to send a binding agreement and then did so, albeit ultimately not on the timeline SNK wanted (NYSCEF # 68 at 4). This is not a misrepresentation.

Finally, SNK argues that due to plaintiff's failure to send a binding document before March 25, 2022, SNK "had no choice but to sign" the LSA and Note (*id.*). But the fact that SNK was stuck between a rock and a hard place has nothing to do with whether plaintiff's earlier statements were true or false.

In short, even if SNK had made their allegations with particularity, the fraudulent inducement claim simply does not make sense. SNK cannot seriously claim that plaintiff made a misrepresentation that a binding document was forthcoming given that a binding document was delivered, with a draft coming down even before the end of principal photography. Plaintiff's motion to dismiss SNK's counterclaim is therefore granted.⁵

*MS 005 – Plaintiff's Motion for Summary Judgment*⁶

The Loan Documents

In early 2022,⁷ plaintiff loaned \$2,366,466 to defendants SNK and TPL, jointly and severally, to finance the Film pursuant to the LSA and Note (together the Agreements) (*see* NYSCEF # 75,⁸ LSA & Note, at LSA §§ 1.1, 3.1, 11.9; *id.* at Note § 5; NYSCEF # 72, Pltf's 19-a, ¶ 12; NYSCEF # 73, Yisser Aff, ¶ 14). There is no serious dispute that per the Agreements, defendants promised to repay \$2,776,754, comprising the loan itself, an "Interest Fee," a "Commitment Fee," a "Tax Credit Monitor Fee," and plaintiff's "Legal Fees through the date of" the LSA and Note, both of which were dated March 22, 2022 (LSA §§ 7.1, 7.3 & Signature Pages; Note § 1 & Signature Page [same]; Pltf's 19-a ¶ 13; NYSCEF # 85, Defts' 19-a, Response ¶ 13 [disputing only whether said amount is currently owed and not the underlying promise]). Any payments are applied to the other fees first and to the loan last (LSA § 7.3).

The Maturity Date was set for March 22, 2023, one year after the date of the Agreements (LSA § 6.1; Note § 1; Pltf's 19-a ¶ 13; Defts' 19-a Response ¶ 13). There is no dispute that a failure to repay by the Maturity Date constitutes an "Event of Default" under both Agreements, and there is no serious dispute that default imposes a default interest rate of 17% per annum on any "outstanding balance of

⁵ The court does not reach the remaining arguments, including plaintiff's arguments about the integration clause.

⁶ The following facts are drawn from the parties' submissions and are undisputed unless otherwise noted.

⁷ The parties dispute the exact date they entered the Agreements (NYSCEF # 89, Pltf's 19-a Reply, ¶ 8), but that dispute is not material to summary judgment given the dismissal of SNK's counterclaims.

⁸ The Note is attached to the LSA as Exhibit A (*see* NYSCEF # 75 at 12). References to "LSA" or "Note" will refer to the version filed in support of summary judgment, although there do not appear to be any meaningful differences between this version and the one submitted in support of dismissal (*compare* NYSCEF # 66, *with* NYSCEF # 75).

the Loan” (not on any of the extra fees) (Defts’ 19-a Response ¶¶ 15-16; LSA §§ 6.3, 10.1.1; Note §§ 1, 4.1).

The Agreements contain no less than three provisions regarding payment of attorneys’ fees. First, both Agreements require defendants to “indemnify [plaintiff] on demand against any loss, damage or liability (including [plaintiff’s] attorneys’ fees and expenses) incurred by [plaintiff] as a consequence of any Event of Default” (LSA § 10.3; Note § 4 [same]; Pltfs 19-a ¶ 25). Second, the Note alone provides that if it “is not paid in full when due, [defendants] promise[] to pay all costs and expenses of collection and reasonable attorneys’ fees and costs incurred by [plaintiff] . . . whether or not suit is filed thereon” (Note § 2). Finally, the LSA alone requires that “the prevailing party in any action or proceeding shall be entitled to receive its reasonable attorneys’ fees and costs from the non-prevailing party” (LSA § 11.5; Pltfs 19-a ¶ 26; Yisser Aff, ¶ 26).

The Agreements also contain several other miscellaneous provisions relevant here. Under the LSA, plaintiff’s obligation to give the loan triggers only if defendants complete certain “Conditions Precedent,” none of which mention or involve the Georgia Tax Credit at issue in SNK’s counterclaim (*see generally* LSA § 2 et cetera). There is no reciprocal provision in the LSA listing conditions precedent for plaintiff’s repayment; plaintiff gets repaid as long as the loan is given (*see generally id.*). The Georgia Tax Credit is not mentioned in the Note and is mentioned only in § 11.8 of the LSA, which essentially provides that any proceeds from the Georgia Tax Credit would be assigned to a non-party lender (*id.* § 11.8 [stating that both defendants, jointly and severally, “acknowledge and agree that (non-party) TPC 2022, LLC d/b/a Three Point Capital (“Tax Credit Lender”) shall be the financier and sole and exclusive benefactor of any and all proceeds relating to or derived from the Georgia State Tax Credit”]). As such, nothing in the section on the Georgia State Tax Credit implies a condition precedent binding plaintiff.

Plaintiff also claims that the LSA contains an integration clause and a clause waiving set-off or counter-claims (Pltfs 19-a ¶¶ 23, 37; LSA §§ 7.3, 11.10). While the parties dispute whether these clauses defeat defendants’ opposition to this motion (Defts’ 19-a Response ¶¶ 23-24), the question is ultimately academic in light of the ruling on the merits *infra*.

Defendants Default

Defendants both failed to pay in full by the March 22, 2023, Maturity Date, constituting an Event of Default under the Agreements (Defts’ 19-a Response ¶¶ 14-15 [undisputed]; Yisser Aff ¶ 16; *see also* NYSCEF # 75, TPL Answer, ¶¶ 19, 42 [TPL “admits the allegation that SNK and (TPL) failed to pay Plaintiff \$2,776,754 in full by no later than March 22, 2023”]). There is no dispute that defendants made some payments. Plaintiff submits as an exhibit a “calculation[] of monies received and the outstanding balance including Default Interest through and including

December 9, 2024” (Calculation of Loan) (Yisser Aff, ¶ 18; NYSCEF # 78, Pltf’s Calculation of Damages; Pltf’s 19-a ¶ 18). According to the Calculation of Loan, defendants have paid a total of \$2,805,268.69, but still owe \$244,144.31,⁹ with default interest continuing to accrue at the rate of \$113.71 per day from December 9, 2024 (Pltf’s 19-a ¶¶ 19-21; NYSCEF # 78; Yisser Aff ¶¶ 19-21).¹⁰

Defendants do not seriously dispute that they entered into the Agreements, failed to pay in full by March 22, 2023, or that plaintiff’s calculations of the remaining balance are incorrect (*see* Defts’ 19-a Response ¶¶ 19, 21 [“Defendants respectfully refer to the (Calculation of Loan) referenced therein for the content thereof”). Instead, defendants dispute whether plaintiff is “entitled to damages in light of [p]laintiff’s bad acts” (Defts’ 19-a Response ¶¶ 13-16, 19-27, 37, 40). As explained in the affirmation of SNK member Adam Beasley—one of the only two documents defendants submit in opposition to this motion—the “bad acts” in question are virtually identical to the allegations underlying the fraudulent inducement counterclaim addressed above (*compare* NYSCEF # 86, Beasley Aff, *with* NYSCEF # 59 ¶¶ 99-136 [making identical allegations to the Beasley Aff]).

Briefly, defendants claim that plaintiff intentionally delayed signing the Agreements until after the end of principal photography and thus prevented defendants from successfully applying for the Georgia Tax Credit (Beasley Aff ¶¶ 9-12). Defendants repeatedly assert that these “bad acts” should prevent plaintiff’s recovery (Defts’ 19-a Response ¶¶ 13-16, 19-27, 37, 40). The parties do not seriously dispute that “[t]he success of the financing of the film turned on the Georgia Tax Credits,” although plaintiff asserts that it was actually the non-party mentioned in LSA § 11.8 that was key to funding (*see* NYSCEF # 89, Pltf’s 19-a Reply, ¶ 3.c).

Discussion (MS 005)

“The proponent of a motion for summary judgment must establish that there are no material issues of fact in dispute and that it is entitled to summary judgment as a matter of law” (*Mazurke v Metropolitan Museum of Art*, 27 AD3d 227, 228 [1st Dept 2006]). Once a movant makes such a showing, the burden shifts to the opposing party to produce evidentiary proof sufficient to raise an issue of fact (*CitiFinancial Co (DE) v McKinney*, 27 AD3d 224, 226 [1st Dept 2006]).

Plaintiff moves for summary judgment on its breach of contract claim. “The elements of a cause of action for breach of contract are ‘the existence of a contract, the plaintiff’s performance thereunder, the defendant’s breach thereof, and

⁹ Relevant to the Commercial Division’s jurisdictional pre-requisites, plaintiff’s calculations indicate that defendants owed \$1,213,605.31 when this case was filed (*see* 22 NYCRR 202.70 [a] [\$500,000 jurisdictional pre-requisite for New York County]), and then made a payment of \$1,060,000 after this case began (NYSCEF # 78).

¹⁰ Defendants do not appear to challenge these calculations despite the fact that they are not supported by financial records of any kind.

resulting damages’ ” (*Lebedev v Blavatnik*, 193 AD3d 175, 182 [1st Dept 2021], quoting *Harris v Seward Park Hous. Corp.*, 79 AD3d 425, 426 [1st Dept 2010]).

Plaintiff meets its *prima facie* burden for breach of contract. The evidence reflects and there is no dispute that the parties entered the LSA and Note (NYSCEF # 75 at 1, 11, 15 [Signature Pages]); plaintiff performed its end of the bargain by loaning defendants \$2,366,446 (Defts’ 19-a Response ¶ 12 [“defendants respectfully refer to (the LSA and Note) for the content thereof”]); defendants did not repay the amount owed by the March 22, 2023 Maturity Date (*id.* ¶¶ 14-15 [undisputed]); and defendants still owe plaintiff \$244,144.31 plus \$113.71 per day since December 9, 2024, after accounting for all repayments and interest as of the filing date of this motion (NYSCEF # 78; Def 19-a Response ¶¶ 19, 21 [“Defendants respectfully refer to (the Calculation of Loan) for the content thereof”]).

Defendants fail to raise an issue of material fact. Defendants’ main argument seems to be that plaintiff is “not entitled to damages” despite defendants’ default on the Agreements because plaintiff “fail[ed] to provide the required binding document needed prior to the End of Principal Photography” to get the Georgia Tax Credit (*see* NYSCEF # 84 at 4-5). But defendants do not explain how their breach of contract and the Tax Credit are legally connected. Defendants do not offer any extrinsic evidence that their obligations to repay under the Agreements are linked to the Tax Credit, and there is nothing within the four corners of the Agreements to indicate such. The Tax Credit is not mentioned at all in the Note and is only briefly mentioned in § 11.8 of the LSA, and only then to assign any revenue from it to a non-party (LSA § 11.8). Moreover, the LSA’s list of “Conditions Precedent” do not mention the Tax Credit at all (*see id.* § 2 et cetera), and there is no reciprocal provision conditioning plaintiff’s repayment on defendants’ ability to get the Tax Credit. There is simply no reason the Tax Credit affects the loan.¹¹

Defendants additionally argue that they are unable to adequately contest this motion because there has not been any discovery, and generally assert that they have a valid counterclaim for fraudulent inducement and valid affirmative defenses for estoppel and failure to mitigate (NYSCEF # 84 at 4-5). Although summary judgments may be denied if it appears that “facts essential to justify opposition may exist but cannot then be stated,” (CPLR 3212 [f]), no such circumstances appear here. The fraudulent inducement counterclaim is dismissed as discussed above, and defendants do not explain the bases for their affirmative defenses or what facts are missing to support them. The court cannot endorse a fishing expedition in the face of an apparently meritorious claim.

¹¹ Defendants’ argument that plaintiffs cannot reply to facts about the Tax Credit because it “cannot meet its *prima facie* burden” on reply borders on frivolous. The Tax Credit is a defense, not part of plaintiff’s *prima facie* case, and plaintiff has no obligation to address it in the opening papers. This is the second borderline frivolous argument from defendants.

As a result, there is no need to reach plaintiff's arguments about the integration clause. There is adequate evidence in the record showing defendants defaulted on the LSA and Note and that their obligations were not conditional upon the Tax Credit, and no evidence or even allegations about what evidence is missing to raise a defense. Plaintiff's motion for summary judgment is granted as to breach of contract.

Plaintiff also seeks summary judgment on its request for attorney's fees per §§ 10.3 and 11.5 of the LSA and §§ 2 and 4 of the Note. Per § 10.3 of the LSA and § 4 of the Note, defendants "shall indemnify [plaintiff] on demand against any loss, damage or liability (including [plaintiff's] attorneys' fees and expenses) incurred by [plaintiff] as a consequence of any Event of Default" (LSA § 10.3). Per § 2 of the Note, defendants "promise[] to pay all costs and expenses of collection and reasonable attorneys' fees and costs incurred by [plaintiff] . . . whether or not suit is filed thereon" if the Note "is not paid in full when due" (Note § 2). Finally, the LSA awards "reasonable attorneys' fees and costs" to the "prevailing party in any action or proceeding" (LSA § 11.5).

Here, this lawsuit to enforce the Agreements is a consequence of an Event of Default. There is no serious dispute that, given plaintiff's entitlement to summary judgment on breach of contract, there are "damages" to be recovered or that plaintiff is the "prevailing party." Moreover, defendants admit that they did not pay the Note in full on the Maturity Date and have yet to do so. Therefore, plaintiff is granted summary judgment on its request for attorney's fees and expenses on §§ 10.3 and 11.5 of the LSA and §§ 2 and 4 of the Note. An inquest will be held by a Special Referee to determine the amount of fees and costs to be recovered from defendants jointly and severally.

Conclusion

Based on the finding above that the counterclaim for fraud is dismissed (MS 004) and plaintiff's summary judgment on its breach of contract claim (MS 005), this matter is disposed. Accordingly, it is hereby

ORDERED that plaintiff New Legend Debt By Meitav Dash Limited Partnership's motion to dismiss defendant Sam & Kate Production's amended counterclaim for fraudulent inducement (MS 004) is granted and the counterclaim is dismissed; and it is further

ORDERED that plaintiff's motion, pursuant to CPLR 3212, for summary judgment on Count 1 of the Complaint for Breach of Contract (MS 005) is granted; and it is further

ORDERED that the Clerk of the Court is directed to enter judgment accordingly in plaintiff's favor against defendants Sam & Kate Productions and

Thomasville Pictures LLC in the amount of \$244,144.31 plus interest at the rate of \$113.71 per day from the date of December 9, 2024, until the filing of this Decision and Order, and thereafter at the statutory rate, as calculated by the Clerk, together with costs and disbursements to be taxed by the Clerk upon submission of an appropriate bill of costs; and it is further

ORDERED that that portion of the plaintiff's action that seeks the recovery of attorney's fees is severed, and the issue of the amount of reasonable attorney's fees that plaintiff may recover against the defendants consistent with this Decision and Order is referred to a Special Referee to hear and report; and it is further

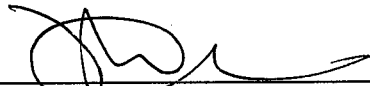
ORDERED that, to facilitate this inquest, plaintiff shall present the Clerk of the Court with a Note of Issue with Notice of Inquest, a copy of this Decision and Order, and any necessary fees within 30 days from the date of this Decision and Order; and it is further

ORDERED that, within 30 days of the filing of the Note of Issue with Notice of Inquest, counsel for plaintiff shall serve a copy of this Order with Notice of Entry, the Note of Issue with Notice of Inquest, and a completed Information Sheet, upon the Special Referee Clerk in the General Clerk's Office (Room 119), who is directed to place this matter on the calendar of the Special Referee's part; and it is further

ORDERED that such service upon the Special Referee 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); and it is further

ORDERED that counsel for plaintiff is directed to serve a copy of this order, together with notice of entry, upon defendant and the Clerk of the Court within 15 days of this order.

4/11/2025
DATE


MARGARET A. CHAN, J.S.C.

CHECK ONE: CASE DISPOSED DENIED NON-FINAL DISPOSITION

APPLICATION: GRANTED SETTLE ORDER SUBMIT ORDER OTHER

CHECK IF APPROPRIATE: INCLUDES TRANSFER/REASSIGN FIDUCIARY APPOINTMENT REFERENCE