

**Bohlen v Salamon**

2025 NY Slip Op 32864(U)

August 13, 2025

Supreme Court, New York County

Docket Number: Index No. 451025/2025

Judge: Lyle E. Frank

Cases posted with a "30000" identifier, i.e., 2013 NY Slip Op 30001(U), are republished from various New York State and local government sources, including the New York State Unified Court System's eCourts Service.

This opinion is uncorrected and not selected for official publication.

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

**PRESENT:** HON. LYLE E. FRANK **PART** **11M**

*Justice*

-----X

CURTIS BOHLEN, AGOSTINO ROCCHI

Plaintiff,

- v -

DAVID SALAMON, CLOSET MASTER NY, LLC,

Defendant.

-----X

**INDEX NO.** 451025/2025

**MOTION DATE** 04/08/2025

**MOTION SEQ. NO.** 001

**DECISION + ORDER ON  
MOTION**

The following e-filed documents, listed by NYSCEF document number (Motion 001) 74, 75, 76, 77, 78, 79, 80, 81, 82, 83, 84, 85, 86, 87, 88, 89, 90, 91, 92, 93, 94, 95, 96, 97, 98, 99, 100, 101, 102, 103, 104, 105, 106, 107, 108, 109, 110, 111, 112, 113, 114, 120, 121, 122, 123, 124, 125, 126, 127

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

Upon the foregoing documents, the plaintiffs’ motion is denied, and defendants’ cross-motion is granted.

**Background**

In June of 2024, Curtis Bohlen and Agostino Rocchi (collectively, “Plaintiffs”) signed a stock purchase agreement (the “Agreement”) with David Salamon (“Individual Defendant, collectively with Closet Master NY, LLC the “Defendants”). In the Agreement, Plaintiffs agreed to sell two hundred shares of Bo-Roc, Inc. to the Individual Defendant in exchange for \$200,000. Plaintiffs allege that the Individual Defendant failed to make the second and third installment payments due under the Agreement, leaving an outstanding amount due of \$119,166.67. Plaintiffs filed the complaint in July of 2024, with a claim of breach of contract against the Individual Defendant and a claim of unjust enrichment against a New York business entity, Closet Master NY, LLC.

**Standard of Review**

Under CPLR § 3212, a party may move for summary judgment and 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.” CPLR § 3212(b). Once the movant makes a showing of a prima facie entitlement to judgment as a matter of law, the burden then shifts to the opponent to “produce evidentiary proof in admissible form sufficient to establish the existence of material issues of fact which require a trial of the action.” *Stonehill Capital Mgt. LLC v. Bank of the W.*, 28 N.Y.3d 439, 448 [2016]. The facts must be viewed in the light most favorable to the non-moving party, but conclusory statements are insufficient to defeat summary judgment. *Id.*

### **Discussion**

Plaintiffs bring the present motion seeking summary judgment against the Individual Defendant on the breach of contract claim. Defendants have cross-moved to deny the motion and dismiss the complaint as to Closet Master. For the reasons that follow, summary judgment is denied due to disputed areas of material fact and the cross-motion to dismiss the second cause of action is granted.

#### **Summary Judgment on the Breach of Contract Claim**

Plaintiffs are seeking summary judgment on the breach of contract claim pled against the Individual Defendant. They argue that they have satisfied their duties under the Agreement and that the Individual Defendant failed to send the second, third, and fourth installment payments when they came due in 2024. There is no dispute that there were no payments sent after the first installment. Defendants in turn argue that Plaintiffs failed to provide disclosure schedules pursuant to the Agreement, failed to disclose material business information regarding trademark rights and the existence of certain lifetime warranties, and did not comply with the obligation to

maintain and assist with customer relationships post-execution of the Agreement. They argue that the payments not made under the installment schedule were withheld pursuant to the offset provision in the Agreement.

A plaintiff's performance under the contract is a required element of a breach of contract claim. *Federal-Mogul Corp. v. UTi, United States, Inc.*, 146 A.D.3d 468, 470 [1st Dept. 2017]. Whether a plaintiff breached first, and whether that breach was material and thus gives grounds for Defendant to breach subsequently, are issues of fact. *Id.*, at 469. Defendants here have raised several areas of disputed fact that would go to whether Plaintiffs performed under the Agreement. Plaintiffs were required to provide disclosure schedules under the Agreement, and according to the Individual Defendant's affidavit these were not provided. The affidavit also alleges that Plaintiffs had redirected important clients away from the business during the lead-up to the Agreement execution without disclosing this to the Individual Defendant in violation of Section 2.20 of the Agreement. Other alleged failures to disclose are that the company's insurance policies were cancelled prior to the expiration date, that the name Creative Closet was not validly trademarked by Plaintiffs, that there was an existing agreement that geographically limited the use of the term Creative Closet and the company's operations in violation of Section 2.17 of the Agreement, and that there was existing indebtedness in the form of a lifetime warranty issued to certain customers.

Defendants have validly raised disputed areas of fact that go to whether Plaintiffs breached the Agreement before the Individual Defendant failed to remit the second installment. Furthermore, the Agreement contains an offset provision that permits the Individual Defendant, at his sole discretion, to offset any "liabilities or debts, whether known or unknown, at the time of Closing and not disclosed to Buyer at Closing." Defendants argue that the installment

payments were not sent because they had been offset by the liabilities and debts created by the alleged failure to disclose the lifetime warranties and existing copyright limitations. There are therefore disputed areas of fact going to the Individual Defendant's alleged breach. Summary judgment at this time would therefore be premature.

*Dismissal of the Unjust Enrichment Claim Pled Against Closet Master Is Granted*

Plaintiffs' second cause of action pleads unjust enrichment against Closet Master, alleging upon information and belief that some of Bo-Roc's assets were transferred to Closet Master. They argue that if so, Closet Master was enriched unjustly because the shares of stock in Bo-Roc were transferred without full payment, and therefore Closet Master should be liable for the amount outstanding under the Agreement. Defendants seek dismissal of the second cause of action, arguing that Closet Master has no contractual obligations to Plaintiffs and that the claim is duplicative of the breach of contract claim.

A plaintiff with an unjust enrichment claim must demonstrate that "it is against equity and good conscience to permit [the other party] to retain what is sought to be recovered", and furthermore "although privity is not required for an unjust enrichment claim, a claim will not be supported unless there is a connection or relationship between the parties that could have caused reliance or inducement on the plaintiff's part." *Georgia Malone & Co., Inc. v. Rieder*, 86 A.D.3d 406, 408 [1st Dept. 2011]. Plaintiffs here fail to state a valid claim for unjust enrichment against Closet Master for several reasons. First, what is sought to be recovered is the value of the stocks that were transferred pursuant to the Agreement, not the Bo-Roc assets that it is alleged Closet Master received. Plaintiffs do not allege that Closet Master received the stocks that were transferred without payment. Secondly, there is no connection between Closet Master and Plaintiffs that has been alleged that would cause any sort of reliance on Plaintiffs' part regarding

the Agreement, or indeed reliance in any matter. Plaintiffs allege that Closet Master was the entity that transferred the first installment payment, but this fails to establish any connection between Closet Master and Plaintiffs that would have induced them to transfer the stocks or assets that they allege constituted enrichment. Because the second cause of action fails to allege a claim for unjust enrichment, even taking the Plaintiffs' allegations as true, dismissal of this cause of action is proper. Accordingly, it is hereby

ADJUDGED that the motion for summary judgment is denied; and it is further

ADJDUGED that the cross-motion to dismiss the second cause of action is granted.

20250815091117LFRANKF2FC37FD957E49179C93477817E84B9F

8/13/2025

DATE

LYLE E. FRANK, 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