

**Drexel Distrib. Inc. v Prophase Diagnostics, Inc.**

2025 NY Slip Op 33393(U)

September 8, 2025

Supreme Court, New York County

Docket Number: Index No. 653503/2022

Judge: Nancy M. Bannon

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

**PRESENT: HON. NANCY M. BANNON PART 61M**

*Justice*

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DREXEL DISTRIBUTION INC., DREXEL DISTRIBUTION  
INC., d/b/a EZ TEST NY

Plaintiff,

- v -

PROPHASE DIAGNOSTICS, INC.,

Defendant.

-----X

INDEX NO. 653503/2022

MOTION DATE 03/14/2025

MOTION SEQ. NO. 004

**DECISION + ORDER ON  
MOTION**

The following e-filed documents, listed by NYSCEF document number (Motion 004) 177, 178, 179, 180, 181, 182, 183, 184, 185, 186, 187, 188, 189, 190, 191, 192, 193, 194, 195, 196, 197, 198, 199, 200, 201, 202, 203, 204, 205, 206, 207, 208, 209, 210, 211, 212, 213, 214, 215, 216, 217, 218, 219, 220, 221, 222, 223, 224, 225, 226

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

**I. INTRODUCTION**

In this action arising from an agreement to provide testing samples during COVID-19, the plaintiffs, Drexel Distribution Inc. and Drexel Distribution Inc. d/b/a EZ Test NY (“Drexel”), seek \$1,654,222.00 in unpaid invoices. Drexel now moves pursuant to CPLR 3212 for partial summary judgment on its breach of contract cause of action or, in the alternative, for summary judgment on its unjust enrichment and quantum meruit causes of action, and damages in the amount of \$462,506.00. The defendant, Prophase Diagnostics, Inc., opposes the motion. The motion is granted in part as to the first cause of action, with reduced damages of \$125,235.00.

**II. BACKGROUND**

Drexel is a limited services laboratory that operates COVID-19 collection and testing sites in New York. Prophase operates a CLIA certified laboratory. On March 7, 2022, the parties entered into a written agreement, whereby Drexel would use Prophase’s laboratory for PCR testing on specimens collected by Drexel. Drexel also used Prophase’s laboratory for billing and reporting services for Antigen tests that Drexel administered to patients who needed rapid test results. Under Section 2(a)(i), Prophase agreed to pay Drexel \$23 per specimen collected, of

which \$13 would be paid within ten days of receiving an invoice from Drexel, and \$10 within 60 days of receiving the invoice. Under Section 2(b), Prophase agreed to pay \$27 for antigen testing, of which \$20 would be paid for Drexel's administration of antigen testing services, and \$7 for reimbursement to Drexel for its costs to purchase the Antigen testing kits. Drexel would invoice Prophase every two weeks for both PCR and Antigen test counts. Prophase agreed to pay for these specimens, as it was reimbursed for all costs of collection, testing, and treatment through a program run by the Health Resources and Services Administration (the "HRSA Program"). Section 2(a)(ii) of the written agreement provides that Drexel is entitled to a \$10 chargeback per specimen collected if is not reimbursed by the HRSA Program or the patient's insurance provider. The HRSA Program ended on March 22, 2022.

Drexel commenced the instant action on September 23, 2022, alleging that Prophase failed to pay certain invoices for PCR testing and Antigen testing. Drexel further alleged that Prophase failed to pay certain invoices related to delivery services, whereby Prophase would pay Drexel for delivery of patient specimens to Prophase's laboratory. In its second amended complaint, Drexel asserts three causes of action - for breach of contract, unjust enrichment, and quantum meruit, respectively, seeking total damages of \$1,654,222.00, plus attorney's fees. Prophase's answer to the second amended complaint answer asserts 17 conclusory affirmative defenses and five counterclaims - for breach of contract, breach of the implied covenant of good faith and fair dealing, quantum meruit, promissory estoppel, and unjust enrichment, seeking compensatory and punitive damages.

Discovery was completed and a Note of Issue was filed. The instant motion ensued.

### III. DISCUSSION

On a motion for summary judgment, the moving party must make a *prima facie* showing of its entitlement to judgment as a matter of law by submitting evidentiary proof in admissible form sufficient to establish the absence of any material, triable issues of fact. See CPLR 3212(b); Jacobsen v New York City Health & Hosps. Corp., 22 NY3d 824 (2014); Alvarez v Prospect Hosp., 68 NY2d 320 (1986); Zuckerman v City of New York, 49 NY2d 557 (1980). Once the movant meets this burden, it becomes incumbent upon the party opposing the motion to come forward with proof in admissible form sufficient to raise a triable issue of fact. See Alvarez v Prospect Hospital, *supra*; Zuckerman v City of New York, *supra*.

(A) First Cause of Action: Breach of Contract

Drexel seeks partial summary judgment under all three theories asserted with respect to the invoices for PCR specimens (EZ-0014, EZ-0026, EZ-0028) and Antigen specimens (EZ-0019A, EZ-0026A, EZ-0028A), which are dated from November 10, 2021, to March 30, 2022, and only during the time period for the HRSA Program. Drexel also seeks to recover for unpaid invoices for delivery services (EZ-0033B, EZ-0034B, EZ-0035B, EZ-0036B, EZ-0037B), which are dated from June 13, 2022, to August 22, 2022, for a combined total of \$462,506.00.

In support of its motion, Drexel submits, *inter alia*, the operative pleadings, the March 7, 2022, written agreement between the parties by which Prophase agreed to pay \$23 per PCR specimen and \$27 per Antigen specimen, and an affidavit of Bedis Zormati, owner of Drexel. Zormati avers that Prophase failed to pay Drexel for certain invoices provided before the HRSA Program expired, including EZ-0014, EZ-0019A, EZ-0026, EZ-0026A, EZ-0028 and EZ-0028A for both PCR specimens and Antigen specimens. These invoices, as well as an Excel sheet detailing the amounts owed and paid for these specific invoices, are also submitted.

Drexel has established its *prima facie* entitlement to judgment on its breach of contract claims for invoices EZ-0026 and EZ-0026A, as Drexel has established (1) the existence of a contract, (2) the party's performance under the contract; (3) the opposing party's breach of the contract, and (4) resulting damages. See Second Source Funding, LLC v Yellowstone Capital, LLC, 144 AD3d 445 (1<sup>st</sup> Dept. 2016); Harris v Seward Park Housing Corp., 79 AD3d 425 (1<sup>st</sup> Dept. 2010). Drexel's submissions show that for EZ-0026, for PCR specimens, dated March 30, 2022, Drexel was due \$403,719.00, of which \$52,659.00 remains outstanding. For EZ-0026A, for Antigen specimens, dated March 30, 2022, Drexel was due \$279,936.00, of which \$72,576.00 remains outstanding. These unpaid amounts total \$125,235.00. The contractual due date on both of these invoices is May 29, 2022, 60 days after March 30, 2022.

In opposition, Prophase fails to submit proof sufficient to raise a triable issue of fact as to invoices EZ-0026 and EZ-0026A. Prophase submits an affidavit from Jason Karkus, its executive vice president, who avers that Prophase made the payments. Paragraph 30 of Karkus' affidavit includes a screenshot of an Excel sheet purporting to show that Prophase made these payments. The excel sheet itself is not submitted as an exhibit. In any event, the purported screenshot of the Excel sheet shows that only partial payment was made on these invoices, and that \$52,659.00 and \$72,576.00 remains outstanding for EZ-0026 and EZ-

0026A, respectively. Finally, the excerpts from Paul Dreyzin's deposition transcript, an employee of Prophase, do not raise a triable issue of fact as to these invoices. The testimony in the excerpts related to Prophase evaluating its insurance reimbursements after the HRSA Program expired. On this motion, Drexel seeks only recovery on amounts owed prior to the HRSA Program's expiration.

However, Drexel fails to submit sufficient evidence to establish its damages for EZ-0028 and EZ-0028A. These invoices show that Drexel was due \$47,181.00 and \$80,703.00, respectively, for specimens collected from March 20, 2022, to April 2, 2022. However, since HRSA Program expired on March 22, 2022, Drexel seeks damages only for work done before March 22, 2022, including \$18,885.00 for EZ-0028 and \$5,620.00 for EZ-0028A. No support is provided for how these amounts were calculated, other than Zormati stating in his affidavit that Drexel is "at least" entitled to these amounts. Thus, Drexel is awarded partial summary judgment on liability as to invoices EZ-0028 and EZ-0028A for liability only, with damages to be determined at trial.

Furthermore, Drexel is not entitled to recover under invoices EZ-0014, dated November 10, 2021, and EZ-0019A, dated January 20, 2022. These invoices, unlike the rest of the invoices on this motion, were not listed in the second amended complaint, and Drexel seeks recovery on these invoices for the first time on this motion. Indeed, in paragraph 14 of the second amended complaint, Drexel pleads that Prophase paid the invoices in full up until EZ-0025, EZ-0025A, EZ-0025B, meaning that prior invoices, including EZ-0014 and EZ-0019A, were paid. Furthermore, these invoices predate the written agreement between the parties, which was executed on March 7, 2022. The written agreement does not obligate Prophase to pay for any work done by Drexel that predates the agreement. Nor does Drexel provide factual or legal support for a contrary conclusion.

Finally, Drexel is not entitled to recover under its delivery invoices, EZ-0033B, EZ-0034B, EZ-0035B, EZ-0036B, and EZ-0037B, totaling \$45,500.00, under its breach of contract theory. The written agreement does not obligate Prophase to pay Drexel for delivering specimens to Prophase's laboratory. To this end, Zormati merely states that in December 2021, Prophase agreed to pay Drexel \$9,100.00 every two weeks for delivery of patient specimens to Prophase's laboratory. Prophase does not point to a separate agreement obligating Prophase to pay for these delivery services.

Prophase argues that summary judgment is inappropriate as it has asserted counterclaims seeking damages for chargebacks under the written agreement for COVID tests as to which it was not reimbursed by an insurer. However, this is not a valid basis to deny Drexel's motion. The only support for the purported chargebacks is a single invoice dated November 7, 2023, billing Drexel \$1,923.623.00 and \$648,219.00 for unreimbursed PCR and Antigen claims, respectively. Nor does Prophase cross-move for summary judgment on its counterclaims. Nonetheless, should Prophase establish at trial that it is entitled to any amount as chargebacks, it would be entitled to a money judgment in that amount. In this regard, the court notes that Prophase's thirteenth affirmative defense also asserts that Prophase is entitled to a set-off, albeit in a conclusory manner.

**(B) Second and Third Causes of Action: Unjust Enrichment and Quantum Meruit**

In the event any portion of its primary relief on the first cause of action were denied by the court, as was done, Drexel seeks alternate relief under its second and third causes of action for unjust enrichment and quantum meruit. Summary judgment is denied as to these claims.

Unjust enrichment is an equitable remedy that is available to a plaintiff only where there is no adequate legal remedy. See Clark-Fitzpatrick, Inc. v Long Is. R.R. Co., 70 NY2d 382 (1987); Empire Outlet Builders LLC v Constr. Res. Corp. of New York, 170 AD3d 582, 583 (1<sup>st</sup> Dept. 2019); Pate v BNY Mellon-Alcantra Mezzanine III, LP, 163 AD3d 429 (1<sup>st</sup> Dept. 2018); JDF Realty, Inc. v Sartiano, 93 AD3d 410 (1<sup>st</sup> Dept. 2012). The plaintiff must show that: "(1) the [defendant] was enriched, (2) at [plaintiff's] expense, and (3) that it is against equity and good conscience to permit the [defendant] to retain what is sought to be recovered". Georgia Malone & Co., Inc. v. Rieder, 19 NY3d 511, 516 (2012), Schroeder v Pinterest Inc., 133 AD3d 12, (1<sup>st</sup> Dept. 2015). To recover under quantum meruit, a plaintiff must establish "(1) the performance of services in good faith, (2) the acceptance of the services by the person to whom they are rendered, (3) an expectation of compensation therefor, and (4) the reasonable value of the services." Fulbright & Jaworski, LLP v Carucci, 63 AD3d 487, 489 (1<sup>st</sup> Dept. 2009).

As this is essentially a breach of contract action, for which Drexel has available legal remedies, it must show that such remedies are inadequate. It did not. To the extent it seeks relief for services that may fall outside the written contract, it again did not meet its burden. Drexel fails to submit *prima facie* proof of the services it performed for Prophase, beyond those

contemplated in the agreement. Drexel’s submissions are insufficient to establish, *prima facie*, that Prophase was enriched at Drexel’s expense, beyond conclusory allegations that Drexel “provided logistical support” for Prophase at Drexel’s expense. The proof submitted also falls short of establishing the elements of quantum meruit. Since Drexel failed to meet its burden in the first instance, the court need not look to the opposing papers for a triable issue. See Alvarez v Prospect Hospital, supra; Zuckerman v City of New York, supra.

IV. CONCLUSION

In light of the court’s rulings herein, remaining for trial are the invoices referenced in Drexel’s first cause of action for which summary judgment was not granted, Drexel’s remaining two causes of action, and Prophase’s defenses and counterclaims. The parties are encouraged to explore settlement.

Accordingly, upon the foregoing papers, it is

ORDERED that the plaintiff’s motion is granted on the first cause of action, breach of contract, to the extent that it seeks damages of \$125,235.00, as set forth herein, and the motion is otherwise denied, and it is further,

ORDERED that the Clerk shall enter judgment in favor of the plaintiffs, Drexel Distribution Inc. and Drexel Distribution Inc. d/b/a EZ Test NY, and against the defendant, Prophase Diagnostics, Inc., in the principal sum of \$125,235.00, plus statutory interest from May 29, 2022, and it is further,

ORDERED that the parties shall appear for in person pre-trial settlement conference in Part 61, at 60 Centre Street, Room 232, on October 9, 2025, at 10:30 a.m.

This constitutes the Decision and Order of the court.

  
 NANCY M. BANNON, J.S.C.  
**HON. NANCY M. BANNON**

9/8/2025  
 DATE

CHECK ONE:

<input type="checkbox"/>	CASE DISPOSED	<input checked="" type="checkbox"/>	NON-FINAL DISPOSITION	<input type="checkbox"/>	OTHER
<input type="checkbox"/>	GRANTED	<input type="checkbox"/>	DENIED	<input checked="" type="checkbox"/>	GRANTED IN PART