| **Go N.Y. Tours Inc. v Vector Media, LLC** |
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| 2025 NY Slip Op 33611(U) |
| September 30, 2025 |
| Supreme Court, New York County |
| Docket Number: Index No. 151029/2025 |
| Judge: Andrew Borrok |
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SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK: COMMERCIAL DIVISION PART 53

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GO NEW YORK TOURS INC. D/B/A TOPVIEW SIGHTSEEING

Plaintiff,

- v -

VECTOR MEDIA, LLC,

Defendant.

**INDEX NO.** 151029/2025

**MOTION DATE** 06/18/2025, 06/12/2025

**MOTION SEQ. NO.** 003 004

**DECISION + ORDER ON MOTION**

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HON. ANDREW BORROK:

The following e-filed documents, listed by NYSCEF document number (Motion 003) 111, 112, 113, 114, 115, 116, 119, 120, 121

were read on this motion to/for MODIFY ORDER/JUDGMENT.

The following e-filed documents, listed by NYSCEF document number (Motion 004) 98, 99, 100, 101, 102, 103, 104, 105, 106, 107, 108, 109, 117, 118

were read on this motion to/for DISMISS.

Upon the foregoing documents and for the reasons set forth on the record (*tr. 9.30.25*) and as set forth below, (i) Go New York Tours, Inc. d/b/a Topview Sightseeing (**GONY**)'s motion (Mtn. Seq. No. 003) for leave to reargue is DENIED and Vector Media (**Vector**)'s cross-motion for sanctions is GRANTED and (ii) Vector's motion (Mtn. Seq. No. 004) to dismiss is GRANTED.

1. **GONY's motion (Mtn. Seq. No. 003) for leave to reargue is DENIED**

Reference is made to a prior Decision and Order of this Court (NYSCEF Doc. No. 88; the **Prior Order**) dated May 19, 2025, pursuant to which this Court (i) granted Vector's motion in the 2025 Action for a preliminary injunction and denied GONY's cross motion and (ii) granted

Vector's motion to hold GONY in contempt in the 2019 Action, which is incorporated herein in its entirety:[1]

> As discussed (*tr*. 5.13.25), neither the Agreement nor the Injunction are ambiguous. Not even a little bit. They are the product of substantial negotiation between sophisticated parties represented by counsel. They are well thought through and comprehensive. They contain specific clear defined terms delineating rights between the parties and charges that the parties agreed were appropriate under the relevant circumstances, including, for the avoidance of doubt, (i) Vector's exclusive right to wrap vehicles in the Fleet as it existed at the time of the Agreement and as such vehicles maybe added to the Fleet in the future and during the term of the Agreement that the parties negotiated, (ii) Minimum Buses is not a static number and the amounts GONY can charge are reflected on certain schedules to the Agreement and as otherwise set forth in the Agreement, (iii) GONY was required to inform Vector of the relevant number of buses that it would run in the time periods set forth in the Agreement so that Vector could sell advertising, and (iv) GONY could charge $350 for the removal of expired advertising campaigns if Vector did not remove them.
>
> As discussed, the record is saturated with evidence of breach by GONY of both the Agreement and the Injunction. The record also includes certain false statements including whether Vector ever consented to GONY's removal of expired campaigns (NYSCEF Doc. No. 69 ¶ 19). They did and they indicated that they could be charged $350 as the Agreement provided (NYSCEF Doc. No. 362 [Index No. 653808/2019]; see e.g., email from Shawn de Jesus, dated February 19, 2025 ["[i]t seems like if we can't agree on this it is within your rights to remove the ad and charge Vector $350"]). Thus, and to be clear, this is not a disputed issue of fact between Vector and GONY. Indeed, if there is a dispute of fact, it is between GONY's Chief Executive Officer, Asen Kostadinov and GONY's Senior Director of Maintenance & Fabrication, Magdy Abdelgowad. For completeness, the Court notes that according to Magdy Abdelgowad, Vector would only allow $350 to be charged for this service when it cost up to $5,750 or more per wrap removal and repair (NYSCEF Doc. No. 61 ¶ 12). According to Asen Kostadinov, on the other hand, "Vector has ***never*** consented to GONY removing Vector's commercial advertisement wraps from GONY buses" (NYSCEF Doc. No. 69 ¶ 19 [emphasis added]). As discussed above, the record establishes that they did in fact consent and this simply is not so.
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> As to the motion seeking an injunction (Mtn. Seq. No. 001 [Index No. 151029/2025]), on the record before the Court and as discussed previously (*Vector Media, LLC v GoNewYork Tours Inc.*, 187 AD3d531 [1st Dept 2020]; NYSCEF

[1] As set forth in the Prior Order, the 2019 Action means the lawsuit captioned *VECTOR MEDIA, LLC v GO NEW YORK TOURS, INC.*, Index 653808/2019. The 2025 Action means the lawsuit captioned *Go New York Tours Inc. d/b/a TOPVIEW SIGHTSEEING v Vector Media, LLC,* Index 151029/2025. Terms used but not otherwise defined shall have the meaning ascribed thereto in the Prior Order.

Doc. No. 306 [Index 653808/2019]), Vector has more than met its burden of establishing a likelihood of success on the merits, irreparable harm in the absence of an injunction and a balance of equities in its favor (*Nobu Next Door, LLC v Fine Arts Housing, Inc.*, 4 NY2d839, 840 [2005]). For the avoidance of doubt, the affirmation of Asen Kostadinov in opposition to the motion for preliminary injunction (NYSCEF Doc. No 69) does not support the denial of the injunction as it appears to contain statements that are demonstrably false on the record before the Court (id. ¶ 19) and that are at odds with ***other GONY affirmations*** with respect to whether Vector has ever consented to GONY removing Vector's commercial advertisement wraps from GONY buses.

Thus, Vector is entitled to the injunction that it seeks. As such, GONY is preliminarily enjoined from (i) refusing to provide Vector with exclusive advertising access to all of GONY's vehicles, based on sufficient advanced notice, as outlined in the Agreement, (ii) conditioning exclusive advertising access on its demands for extra-contractual payments or that Vector first repair and/or modify GONY's "TopView" branding and (iii) modifying the bus numbers provided in its December 7, 2024 notice to Vector, unless and until Vector agrees otherwise. Vector however must either (x) remove expired campaigns or (y) consent to GONY removing them and be charged $350 pursuant to the terms of the Agreement.

Vector shall post a $1,000 bond in support of the preliminary injunction within 60 days. Inasmuch as it appears that there are no issues of fact warranting additional discovery, leave is granted to Vector to move for summary judgment in support of any counterclaim that it asserts for breach in the 2025 Action and for dismissal of the complaint in the 2025 Action.2 As to the motion seeking to hold GONY in contempt (Mtn. Seq. No. 008 [Index No. 653808/2019]), as discussed above, the Agreement and the Injunction are not ambiguous and argument to the contrary is just knowingly false. The Injunction is a clear and unequivocal order of this Court that was the product of significant negotiations between the parties. The record before the Court establishes GONY's willful and contumacious violation of that order by clear and convincing evidence (*El-Dehdanv El-Dehdan*, 26 NY3d19, 29 [2015]). Vector has been substantially prejudiced as a result of GONY's conduct (id.). As such, Vector's motion for contempt is granted and GONY is fined $250 plus Vector's costs and expenses incurred in connection with the contempt motion.

The Court has considered the parties' remaining arguments and finds them unavailing.

Accordingly, it is hereby ORDERED that Vector's motion in the 2025 Action (Mtn. Seq. No. 001 [Index No. 151029/2025]) for a preliminary injunction is GRANTED as set forth above; and it is further

ORDERED that the undertaking is fixed in the sum of $1,000, which sum Vector shall post no later than 60 days from the date of this Decision and Order; and it is further

> ORDERED that GONY's cross-motion is DENIED; and it is further
>
> ORDERED that Vector is granted leave to move for summary judgment as to its counterclaim in the 2025 Action and for dismissal of the complaint in the 2025 Action; and it is further ORDERED that Vector's motion in the 2019 Action (Mtn. Seq. No. 008 [Index No. 653808/2019]) for contempt is GRANTED; and it is further
>
> ORDERED that GONY is fined $250 plus Vector's costs and expenses incurred in connection with the contempt motion; and it is further
>
> ORDERED that Vector will, within 14 days of the date of this order, provide GONY with an itemized invoice of its costs and expenses, including reasonable attorney's fees incurred in the contempt proceedings and if the parties cannot agree on the amount of such reasonable costs and fees within 30 days, the parties shall email Part 53 (sfc-part53@nycourts.gov), and the Court will arrange a conference to hold a hearing on the reasonable attorney's fees and costs.

(NYSCEF Doc. No. 113 [emphasis added and footnotes omitted]).

In this motion, GONY seeks to reargue "the parties' respective rights and obligations with regard to removal of Vector's expired advertising wraps from GONY's tour buses" (NYSCEF Doc. No. 115 at 2). More specifically, GONY seeks to modify the Prior Order to the extent that it states that Vector "must either (x) remove expired campaigns or (y) consent to GONY removing them and be charged $350 pursuant to the terms of the Agreement" (*id*. at 9). According to GONY, the Court misconstrued the Agreement in that the $350 charge right only applies during the two-week "Removal Grace Period" (*id*. at 1). The argument is entirely frivolous.

A motion for leave to reargue should be "based upon matters of fact or law allegedly overlooked or misapprehended by the court in determining the prior motion" (CPLR §2221[d]). Reargument is not intended "to afford the unsuccessful party successive opportunities to reargue issues previously decided or to present arguments different from those originally asserted" (*Haque v*

*Daddazio*, 84 AD3d 940, 242 [2d Dept 2011]). Reargument "is granted sparingly and should not be used as a second chance freely given to parties who have failed to exercise due diligence in making their first factual presentation" (*Wade v Giacobbe*, 176 AD3d 641 [1st Dept 2019], *lv dismissed* 35 NY3d 937 [2020]). Simply put, reargument "does not afford another bite of the apple" (*Weaver v Weaver*, 198 AD3d 1140, 1144 [3d Dept 2021]).

Initially, the Court notes that GONY did not previously argue that the right to charge $350 only applies during the two-week Removal Grace Period such that they can now charge more or seek different damages. As such, reargument is simply inappropriate. However, the motion must be denied for other reasons as well. The Agreement does not say that the right to charge $350 for advertising applies ***only*** during the two-week Removal Grace Period. It does not say that or anything like that.

As previously discussed, neither the Agreement nor the Injunction are ambiguous. They are the product of substantial negotiations between sophisticated parties who were represented by counsel. They are well thought through and comprehensive. The Agreement establishes that Vector has the ***exclusive*** right to advertise on ***all of*** GONY's operating vehicles. The Agreement provides that GONY "is in the business… of operating a privately owned bus fleet (the 'Fleet')" and that the "[p]arties have agreed that [GONY] shall grant to [Vector] ***the exclusive right to advertise on all of [GONY's] vehicles"*** (NYSCEF Doc. No. 102 § 1; *see also* § 1[b] and [c] [emphasis added]). The term "Vehicles" means "***all*** of [GONY's] vehicles, including but not limited to, the Fleet, as well as any vehicles added to the Fleet" (*id*. [emphasis added]). The Agreement additionally indicates that Vector's right to receive and GONY's obligation "to

provide the advertising rights granted herein, shall apply with respect to ***all vehicles that are operated by [GONY] in the Territory*** whether on or under [GONY]'s permits and licenses or otherwise in the manner described in Section 1 of this Agreement (*id*. § 10[b] [emphasis added]). Thus, the parties agreed that GONY could not charge the right to advertise on any of their Vehicles to anyone other than Vector during the term of the Agreement. Finally, the Court notes that the parties made it clear that:

> neither [GONY] ***nor any third party*** shall display any advertising in or on the Fleet, with the sole exception that [Vector], shall integrate [GONY's] branding in the manner depicted in Exhibit B. In the event that [GONY] operates or possesses Additional Vehicles (as defined herein), during the Term, any advertising on such Additional Vehicles shall be the exclusive right of [Vector].

(*id*. § 1[c] [emphasis added]).

As previously discussed, in Section 3(b) of the Agreement, the parties provided for very specific rights and remedies with respect to the installation and removal of advertising. To wit, the parties agreed that advertising copy was to remain on Vehicles for the entire advertising campaign. Following the conclusion of an advertising campaign, Vector was permitted to continue advertising for up to two weeks on a Vehicle – *i.e.,* the so-called Removal Grace Period. The parties explained in the Agreement that this grace period was to reduce expenses for the parties (including potentially minimizing possible disruptions to bus service given the time involved in advertising wrap removal which GONY had indicated was an issue in the 2019 Action) by allowing for the coordination of removal of existing advertising and for the installation of new advertising copy. The parties additionally agreed that during the Removal Grace Period, GONY had certain flexibility – *i.e.*, it no longer had to operate the Vehicle unless and until an active advertising campaign was installed. Additionally, the parties agreed that

GONY, with Vector's consent, could remove the advertising and charge $350 per occurrence of advertising copy removal. Nothing in Section 3(b) indicates that the agreed upon $350 charge is limited to the Grace Period as GONY now frivolously argues:

> (b) Removal of Advertising Copy. The Parties agree that advertising copy must remain posted on Vehicles throughout the entirety of an advertising campaign. Following the conclusion of an advertising campaign, Licensee shall be permitted to maintain the advertising copy on such Vehicle for a period of up to two (2) weeks from the end of the advertising campaign (the "Removal Grace Period"), the purpose of which would be to reduce expense through the coordination of the installation of a subsequent advertising campaign with the removal of the existing advertising copy. The Parties agree that Licensor need not operate the Vehicle during the Removal Grace Period unless and until an active advertising campaign is posted on the Vehicle. Licensee shall be permitted, by itself or through its subcontractors, to remove advertising copy at any point throughout the Removal Grace Period, but following the end of the Removal Grace Period, upon request from Licensor, Licensee must ensure that the advertising copy is removed from such Vehicle within 24 hours therefrom. Additionally, should Licensor prefer to perform advertising copy removals itself, it shall have the option to do so (with prior written (including over email) approval from Licensee and in accordance with the terms herein), and shall charge Licensee an amount equal to $350 per occurrence of advertising copy removal. Further, in the event that Licensee posts any advertisements that are overtly religious, political, or pornographic in nature, and Licensor shall prefer to have the advertisement removed, it shall notify Licensee of the issue and, if the parties are unable to agree on whether such advertisement should be removed after one business day of discussions, Licensee shall remove such advertisement within 24 hours therefrom or Licensor may remove such advertising.

(*id*. § 3[b] [emphasis added]). In other words, and as the Court previously held, for its part, Vector must either (x) remove expired campaigns or (y) consent to GONY removing them and be charged $350 pursuant to the terms of the Agreement (NYSCEF Doc. No. 88 at 4). For its part, GONY (i) beginning during the Removal Grace Period can cease to operate the Vehicle until an active advertising campaign is posted on the Vehicle and (ii) ***following the end of the Removal Grace Period,*** it can request the removal of the advertising copy which Vector must remove within 24 hours or it can elect to remove the advertising copy itself with Vector's consent and charge Vector $350 per occurrence of advertising copy removal as the agreed upon

damage upon (NYSCEF Doc. No. 102 § 3[b]. Lastly, and for completeness, the Court notes that parties agreed that if Vector posts advertisements that are "overtly religious, political or pornographic in nature," (*id*. § 3[b], GONY may notify Vector that it wants those advertisements removed on ***those grounds*** and that if after one business day of discussion the parties were not able to agree as to whether removal was appropriate, GONY could remove such advertisements. Thus, and based on the clear terms of the Agreement, GONY's motion to reargue is entirely frivolous and it is DENIED.

On the record before the Court, it would be an improvident exercise of discretion to deny Vector's cross motion seeking sanctions (*Ray v Ray*, 2024 Slip Op 05777 [1st Dept 2024]). The record before the Court firmly establishes that GONY has engaged in a persistent pattern of extended and meritless litigation, all in an attempt to evade the exclusive advertising agreement with Vector during the term set forth in the Agreement. The positions taken by GONY in this motion and otherwise have been wholly without merit, not supportable reasonable argument (22 NYCRR § 130-1.1 [c][1]), and are irreconcilably at odds with the express unequivocal language set forth in the Agreement and the Injunction. Additionally, and among other things, the Court notes and as previously discussed in the Prior Order, GONY has adduced affidavits of its employees and officers that are irreconcilably at odds with each other (NYSCEF Doc. No. 88 at 3). Thus, Vector's motion for sanctions is granted, and GONY is fined $1000 and is liable for reimbursement of actual expenses reasonably incurred and attorney's fees resulting in connection with the motion to reargue (*id*. § 130-1.1 [a]). Vector may submit its bill and an order. If GONY disagrees with the reasonableness of the attorneys' fees within one week's receipt of the same, the matter shall be referred to a Judicial Hearing Officer to hear and determine.

**2. Vector's motion (Mtn. Seq. No. 004) to dismiss is GRANTED.**

On a motion to dismiss pursuant to CPLR 3211, the court must afford the pleadings a liberal construction and accept the facts alleged in the complaint as true, according the plaintiff the benefit of every favorable inference (*Leon v Martinez*, 84 NY2d 83, 87–88 [1994]). However, conclusory allegations, or claims consisting of bare legal conclusions with no factual specificity, are insufficient to survive a motion to dismiss (*Eccles v Shamrock Capital Advisors, LLC*, 42 NY3d 321, 343 [2024]). Where a written agreement unambiguously contradicts the allegations supporting a litigant's cause of action for breach of contract, the contract itself constitutes documentary evidence warranting the dismissal of the complaint (*Madison Equities, LLC v Serbian Orthodox Cathedral of St. Sava*, 144 AD3d 431 [1st Dept 2016]).

**A. GONY IS NOT ENTITLED TO A DECLARATION (1ST CAUSE OF ACTION) THAT IT MUST ONLY MAKE FIVE BUSES AVAILABLE EACH YEAR FOR THE REMAINDER OF THE TERM OF THE AGREEMENT**

As relevant to this cause of action, GONY asserts:

> 21. The need to vest Go New York with sole authority to set the Minimum Buses (in excess of the lowest threshold of five), as memorialized in the Agreement, is because Go New York needs to have at least some of its vehicles running without Vector's commercial wrapping in order to preserve and promote its TopView brand.[2]
>
> 22. Indeed, Go New York has received reports from independent contractors and employees that they cannot identify TopView's buses around New York City because the buses are all covered in Vector's advertising campaigns obstructing TopView's corporate branding.

[2] As discussed (*tr.* 9.30.25), the statement that GONY has the right to have some of its vehicles running without Vector's commercial wrapping *in order to preserve and promote its TopView brand* is plainly false. To be sure nothing in the agreement gives Vector the right to prevent GONY from operating vehicles but GONY does not have the right to prevent Vector from exercising its exclusive rights under the Agreement and GONY negotiated very specific rights with respect to the advertising of its TopView brand.

> 23. If the Agreement provided as Vector is claiming – that it is permitted to cover all of Go New York's buses with commercial ads, none of Go New York's customers or representatives would even be able to see that the TopView brand is running tours.
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> …
>
> 27. For reasons stated above, the Agreement requires only that (i) Go New York make available to Vector a minimum of five buses each month of each calendar year for the remainder of the term of the Agreement, and (ii) Go New York can adjust the committed bus count forecasts upwards or downwards by 20% on 90 days' notice to Vector.
>
> 28. Nevertheless, Vector has claimed that the Agreement provides Vector with an exclusive right to advertise on all of Go New York's vehicles, including but not limited to Go New York's fleet, as well as any vehicles added to the fleet.
>
> 29. Thus, there exists an actual, justiciable controversy concerning the rights and legal relations among the parties.
>
> 30. Therefore, Go New York respectfully requests this Court to render judgment declaring that (i) Go New York only ***must make available*** to Vector a minimum of five buses each month of each calendar year for the remainder of the term of the Agreement, and (ii) Go New York can adjust the committed bus count upwards or downwards by 20% on 90 days' notice to Vector.

(NYSCEF Doc. No. 3. ¶¶21-23 and 27-30 [emphasis added]). The express language of the Agreement sounds the death knell for this cause of action (and, inasmuch as the core assertion is simply false and entirely unsupportable by reasonable argument, provides additional grounds as to why Vector's cross-motion for sanctions must be granted). The minimum bus requirement is not a requirement as to the number of buses that GONY must ***make available.*** It is a requirement as to the minimum number of buses that Vector must ***operate.***[3]

As discussed above, pursuant to the express language of the Agreement, GONY granted Vector media the "exclusive right to advertise on ***all*** of GONY's vehicles (NYSCEF Doc. No. 102 § 1

[3] GONY's argument is a transparent attempt to try to avoid the fact that this is an exclusive rights agreement.

[emphasis added]; see also § 1[b] and [c]). All means all. Thus, it is simply false to assert that GONY needs or has the right to "have some of its Vehicles running without Vector's commercial wrapping in order to promote its TopView brand" (NYSCEF Doc. No. 3 ¶ 21) or that it need only make five buses available for Vector to advertise on but it could otherwise operate other Vehicles which Vector ***did not have the right*** to advertise on. This is totally false. As discussed further below, the concept of minimum buses referred to the parties' agreement that GONY would be required to have a minimum number of buses ***operating*** as part of its Fleet, which Fleet in its entirety, as discussed above, Vector has the right to post advertising on:

> **(d) Operation Requirements.** ***Throughout the duration of the Term***, as defined in Section 2, Licensor shall ***operate*** a hop-on, hop-off sightseeing tour with no fewer than the Minimum Buses (as defined herein) in their usual and ordinary manner in accordance with the Operation Requirements.

(NYSCEF Doc. No. 102 § 1[d] [emphasis added]).

In fact, the Agreement does address GONY's own advertisement rights. It (i) permits GONY to display its own branding provided that it does not interfere with Vector's ability to post and maintain its advertising, (ii) specifies where Vector may post advertising on (NYSCEF Doc. No. 102 § 3[a]; Exhibit B[a][1]) and (iii) otherwise requires Vector to integrate GONY's branding in the manner depicted in Exhibit B (*id.* § 1[c]). The Agreement also provides that if GONY's branding becomes damaged or destroyed upon removal of advertising copy, once per year, Vector is required to reimburse GONY for 85% of the actual cost of installing and printing the replacement branding. Additionally, Vector is required to reimburse GONY for up to 25% of the actual cost of printing and replacement branding required by GONY (*id.* at § 3[c]). These terms with limited exception are incorporated into the Injunction,

The Agreement also does not say that GONY only has to ***make available*** five buses each month. It does not even say that GONY only has to ***operate*** five buses. The Agreement read as a whole says something different than that too. For the period beginning on January 1, 2021, and concluding on March 31, 2022, Section 1(d) of the Agreement sets forth the minimum number of buses that Vector must operate and the monthly compensation per Vehicle; as of March 2022, the minimum number of buses that GONY was required ***to operate*** was 10 vehicles (*id.* at §1[e][i]). For the period beginning on April 1, 2022 and concluding on December 31, 2022, and no fewer than sixty days before the beginning of any month, GONY was required to notify Vector of the minimum number of buses it would ***operate*** during that period (*id.* at §1[e][ii])). Thereafter, during the period of time beginning on January 1, 2023, and concluding at the end of the term, no fewer than 90 days prior to the commencement of each calendar year, GONY was required to notify Vector of the Minimum Buses it would operate in each month of the applicable calendar year (*id.*). Without penalty, GONY could then increase or decrease that amount by 20% rounding up to the next Vehicle so long as it notified Vector Media at least 90 days prior to the start of the applicable month (*id.* at § 1[e][iii]).

For completeness, the Court notes finally that the Overage Payment provision (*i.e.*, Section 4[c]) refers to a situation where Vector wishes to advertise on more than the number of buses that GONY certified would be the minimum buses (Section 1[e][iv]) – *i.e.*, where GONY agrees to operate more buses that it had anticipate, Vector may pursuant to its exclusive right to advertise on the Fleet, advertise on such "overage" vehicles for an enhanced fee.[4]

[4] Pursuant to Section 1(e)(iv) GONY is required to ***certify*** the number of operating vehicles within five days of each month. It is not a "good faith" estimate and it does not authorize GONY to withhold operating vehicles from the

Thus, GONY is not entitled to a determination that it only needed to make available five buses at any time during the term of the Agreement ***unless the total number of Vehicles it was operating was five.*** For GONY to be entitled to that declaration as of January 1, 2023, either (i) GONY would have previously only ***operated*** five buses in the proceeding period or (ii) that it had given appropriate notice in accordance with the Agreement that it had elected to decrease the number by as much 20% such that the minimum number of buses that it was required to ***operate*** was then five. The Amended Complaint does not allege that. In fact, it alleges something very different – *i.e.*, that as of March 2025, Vector "asserted (without merit) that Vector would institute 2024 bus count numbers for 2025 (where March's count would be 20 instead of 23)" (NYSCEF Doc. No. 3 ¶ 19).

Inasmuch as the Agreement and Injunction are ambiguous and there is no need for additional discovery as to Vector's exclusive right to place advertising on GONY's vehicles during the term of the Agreement and in accordance with the Agreement, the proper course as to this issue is to declare in Vector's favor and to permit them to submit judgment (*Spada v Aspen Univ., Inc.*, 202 AD3d 494, 495 (1st Dept 2022). To the extent that the Amended Complaint can be read to merely seek a declaration that the minimum number of buses that GONY must ***operate*** as opposed to "***must make available*** to Vector a minimum of five buses each month of each calendar year for the remainder of the term of the Agreement," this cause of action is dismissed. For the avoidance of doubt, the Court notes that there simply is no justiciable controversy as to

minimum bus numbers. It does not say that and that reading is not an alternative plausible reading creating an ambiguity.

whether the Agreement permits a 20% increase/decrease in the minimum number of buses that GONY must operate and GONY does not allege that there is a dispute as to this issue. As such, to the extent that the first cause of action seeks a declaration as to that issue, it too must be dismissed.

**B. THE ANTICIPATORY BREACH OF CONTRACT (2ND) CAUSE OF ACTION IS DISMISSED.**

GONY's anticipatory breach of contract cause of action is predicated on (i) Vector's requirement that it be given the exclusive right to place advertising on GONY's Vehicles and (ii) that Vector did not timely remove stale advertising. As to the first, Vector can not be held to have breached the contract by requiring GONY to abide by the clear and unambiguous terms of the Agreement granting it the exclusive right to place advertising. As to the second, and as discussed above and previously (among other times in connection with the preliminary injunction), the parties negotiated remedies for GONY as to Vehicles that have advertising campaigns that are no longer active (including that GONY did not need to operate those Vehicles and that it could remove that advertising and charge $350 to Vector) (NYSCEF Doc. No. 88 at 2). As such, GONY can not be said to have anticipatorily breached the agreement and this cause of action too must be dismissed.

**C. THE BREACH OF CONTRACT (3rd) CAUSE OF ACTION IS DISMISSED**

GONY's breach of contract claim is predicated on its allegation that Vector failed to remove Advertising Copy upon conclusion of an advertising claim and that as a result of this breach it suffered damages in the form of lost sales, lost revenues, and increased costs and expenses, in excess of $5 million:

36. Go New York repeats and realleges the allegations in each of the foregoing paragraphs as if set forth fully herein.

37. Go New York and Vector have entered into the valid Agreement.

38. Go New York has performed all terms and conditions on its part to be performed under the Agreement.

39. As a direct and proximate result of Vector's breach of the Agreement, Go New York suffered monetary damages in the form of lost sales, lost revenue, and increased costs and expenses, in excess of five-million dollars ($5,000,000).

40. Vector has breached the terms of the Agreement, by among other things, on many occasions, failing to remove expired Advertising Copy upon conclusion of an advertising campaign.

(NYSCEF Doc. No. 3 ¶¶ 36-40).

As discussed above (and previously), the Agreement is an exclusive agreement where Section 3(b) makes clear the rights and remedies of the parties including the circumstances under which GONY could elect not to operate a Vehicle if it so chose and the circumstances under which it could claim damages in the amount of $350 for removing advertising. To be sure the Agreement requires Vector to "ensure" that ads are removed within 24 hours of demand, but they further provided for GONY's remedy by indicating that GONY could elect to remove the advertising itself and charge $350 for removal services lost sales, lost revenue, increased costs and expenses simply are not what the parties bargained for and it is not for this Court to rewrite their agreement (NYSCEF Doc. No. 102 § 3[b]). Additionally, nothing in the Amended Complaint suggests that Vector in any manner prevented GONY from removing ads when it had the right to do so. Lastly, the Court notes the assertion that the parties agreed that rather than remove the ad and charge $350, the parties understood and agreed that GONY could sit back and do nothing and seek substantial monetary damages not provided for in the Agreement is totally illogical and

absurd (*see Reichert v N. MacFarland Builders, Inc.*, 85 AD2d, 767, 767 [3d Dept 1981]; *In re Lipper Holdings, LLC*, 1 AD3d 170, 171 [1st Dept 2003]).

The Court has considered the parties' remaining arguments and finds them unavailing.

Accordingly, it is hereby

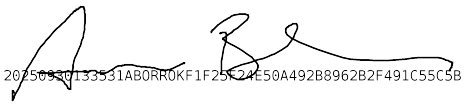
ORDERED that GONY's motion to reargue (Mtn. Seq. No. 003) is denied; and it is further

ORDERED that Vector's cross-motion for sanctions is GRANTED, and GONY is fined $1,000 and is liable for Vector's reasonable attorney's fees and expenses resulting from the filing of the motion to reargue; and it is further

ORDERED that Vector shall submit order on the issue of sanctions, together with its bill for reasonable attorneys' fees and expenses and if GONY indicates that it disagrees with the reasonableness of the attorneys' fees and expenses within one week's receipt of the same, the matter shall be referred to a Judicial Hearing Officer to hear and determine; and it is further

ORDERED that Vector's motion to dismiss is granted; and it is further

ORDERED that Vector shall submit judgment.




**9/30/2025**
**DATE**

**ANDREW BORROK, J.S.C.**

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|---|---|---|---|---|---|---|---|
| **CHECK ONE:** | X | **CASE DISPOSED** | | | **NON-FINAL DISPOSITION** | | |
| | | **GRANTED** | | **DENIED** | **GRANTED IN PART** | X | **OTHER** |
| **APPLICATION:** | | **SETTLE ORDER** | | | X **SUBMIT ORDER** | | |
| **CHECK IF APPROPRIATE:** | | **INCLUDES TRANSFER/REASSIGN** | | | **FIDUCIARY APPOINTMENT** | | **REFERENCE** |