

**Corporate Collections LLC v Cole**

2025 NY Slip Op 33767(U)

October 2, 2025

Supreme Court, New York County

Docket Number: Index No. 650869/2024

Judge: Nicholas W. Moyne

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This opinion is uncorrected and not selected for official publication.

**SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF NEW YORK: PART 41M**

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CORPORATE COLLECTIONS LLC,	<b>INDEX NO.</b> <u>650869/2024</u>
Plaintiff,	<b>MOTION DATE</b> <u>06/10/2024, 07/29/2024</u>
- v -	<b>MOTION SEQ. NO.</b> <u>002 003</u>
NEIL COLE, ICONIX BRAND GROUP, INC.	
Defendant.	

**DECISION + ORDER ON  
MOTION**

-----X

HON. NICHOLAS W. MOYNE:

The following e-filed documents, listed by NYSCEF document number (Motion 002) 56, 57, 58, 59, 60, 61, 62, 63, 66, 67, 68, 69, 70, 71, 72, 73, 74, 75, 76, 77, 78, 79, 80, 81, 82, 83, 84, 85, 86, 95, 96, 97, 98, 99

were read on this motion to/for DISMISS

The following e-filed documents, listed by NYSCEF document number (Motion 003) 88, 89, 90, 91, 92, 93, 94, 101, 102, 103, 104, 105, 106, 107, 108

were read on this motion to/for DISMISS

Upon the foregoing documents, it is

The following motions pursuant to CPLR § 3211 are before the Court: (1) Motion Sequence 002 brought by Defendant Iconix International Inc., f/k/a Iconix Brand Group, Inc. ("Iconix"), seeking dismissal of the Amended Complaint as against it and requesting sanctions, and (2) Motion Sequence 003 brought by Defendant Neil Cole ("Cole") seeking dismissal of the Amended Complaint as against him based on lack of capacity to sue.

Plaintiff Corporate Collections LLC ("CCLLC") is the assignee of TransPerfect Document Management, Inc. ("TransPerfect" or "Assignor"). CCLLC seeks to recover an unpaid balance of \$98,920.96, plus interest and collection costs, for litigation support services TransPerfect provided to Cole, the former CEO and founder of Iconix. These services were rendered pursuant to a written agreement dated July 28, 2022, between Cole (or his counsel, Kaplan Hecker & Fink LLP and TransPerfect. The litigation support provided by TransPerfect to Cole and his lawyers related to a federal criminal proceeding against Cole, in which he was ultimately convicted of securities fraud and related charges. The Amended Complaint asserts three claims against Iconix: (1) Breach of Implied Contract (Second Cause of Action); (2) Breach of Third-Party Beneficiary Contract (Third Cause of Action); and (3) Account Stated (Fourth Cause of Action). The Amended Complaint also asserts causes of action against Cole for

- (1) Breach of Contract (First Cause of Action);
- (2) Account Stated (Fourth Cause of Action); and
- (3) legal fees and costs of collection (Fifth Cause of Action).

Under CPLR 3211 (a) (7), the movant has the burden to demonstrate that the complaint, construed liberally in favor of the plaintiff, states no legally cognizable cause of action (*Leon v Martinez*, 84 NY2d 83, 87-88 [1994]; see also *Goshen v Mut. Life Ins. Co. of NY*, 98 NY2d 314, 326 [2002]). Plaintiff is accorded “the benefit of every possible favorable inference” (*Goshen*, 98 NY2d at 326 [internal quotation marks and citation omitted]). “Whether the plaintiff will ultimately be successful in establishing [its] allegations is not part of the calculus” (*Greystone Funding Corp. v Kutner*, 121 AD3d 581, 583 [1st Dept 2014] [internal quotation marks and citation omitted]).

When documentary evidence is submitted by a defendant the standard morphs from whether the plaintiff has stated a cause of action to whether it has one (see *Basis Yield Alpha Fund (Master) v Goldman Sachs Group, Inc.*, 115 AD3d 128, 135 [1st Dept 2014]). On a CPLR 3211 (a) (1) motion to dismiss on the ground that the action is barred by documentary evidence, such motion may be appropriately granted only where the documentary evidence utterly refutes plaintiff's factual allegations, conclusively establishing a defense as a matter of law (see *Goshen*, 98 NY2d at 326; see also *Art & Fashion Group Corp. v Cyclops Prod., Inc.*, 120 AD3d 436, 438 [1st Dept 2014]).

### Motion Sequence 002

The third cause of action alleges that TransPerfect was an intended third-party beneficiary of Iconix's contractual obligation to indemnify Cole under its corporate by-laws. For the reasons discussed during oral argument on the motions, the Court finds that Iconix is entitled to dismissal of the third cause of action based on documentary evidence demonstrating that the underlying indemnification obligation to Cole was negated by his conviction and sentencing, and also because the third cause of action fails to state a claim against Iconix because TransPerfect cannot claim standing as a third-party beneficiary of any contract or indemnification agreement between Iconix and Cole.

The validity of this claim rests entirely upon the existence of IBG's ongoing obligation to indemnify Cole for the Services. Article VII, Section 2(c) of the Iconix Restated and Amended By-Laws provides:

**"No indemnification shall be made to or on behalf of any Indemnit[e]es if a judgment or other final adjudication adverse to him or her establishes that such Indemnit[e]es['] acts were committed in bad faith or were the result of active and deliberate dishonesty and were material to the cause of action so adjudicated".**(emphasis added).

This section is applicable here. Cole was convicted by a jury and subsequently sentenced to 18 months in prison for securities fraud and making false SEC filings. Iconix correctly argues that this conviction and sentencing constitute a judgment or other final adjudication establishing acts committed in bad faith and deliberate dishonesty. While Cole argues that the obligation to advance expenses continues because his conviction is pending appeal, New York law applicable to the finality of criminal judgments dictates otherwise. It is well-settled that the imposition of

the sentence constitutes the final judgment against the accused, and that the finality of it is not changed by the pendency of the appeal (*see Dupree v Scottsdale Ins. Co.*, 129 AD3d 586, 587 [1st Dept 2015]). The judgment therefore conclusively establishes the disqualifying conduct under the By-Laws, relieving Iconix of any indemnification obligation to Cole for these expenses. Furthermore, the prior court order requiring Iconix to advance expenses in the related case (*Cole v. Iconix*, Index No. 655837/2021) was nullified when the parties stipulated to discontinue that action with prejudice in February 2022. The invoices at issue here (dating from August 2022 to August 2023) arose well after this nullification, eliminating any reliance on that prior advancement order. Since the documentary evidence establishes, as a matter of law, that IBG's obligation to indemnify Cole was negated by his final conviction, there is no underlying contractual obligation for TransPerfect to enforce.

Even assuming, arguendo, the obligation was not negated by Cole's conviction, TransPerfect /Plaintiff fails to meet the stringent standard for asserting intended third-party beneficiary status. The two recognized situations for a third party to enforce a contract require either that the third party be the sole party who could recover for the breach or that the contract language clearly evidences an intent to permit enforcement by a third-party beneficiary (*see Fourth Ocean Putnam Group v Interstate Wrecking Co.*, 66 NY2d 38, 45 [1985]; *see also Dormitory Auth. Of the State of N.Y. v Samson Constr. Co.*, 30 NY3d 704, 711 [2018]). TransPerfect is clearly not the only party who could recover; Cole, as an officer and the primary indemnitee under the By-Laws, could sue Iconix for breach of the indemnification clause. Second, the By-Laws govern the relationship between Iconix and its officers and directors. They do not expressly name TransPerfect (or any other vendor) as a party entitled to enforcement. TransPerfect is an incidental beneficiary whose fees merely satisfy Iconix's obligation. The benefit derived by the vendor is the mere satisfaction of the officer's debt, which is not sufficient to confer the right to enforce the By-Laws directly against Iconix. Accordingly, the third cause of action for breach of Third-Party Beneficiary contract against Iconix should be dismissed.

The second cause of action alleges an implied-in-fact contract between TransPerfect and Iconix, arising from both Iconix's past conduct wherein it allegedly agreed to reimburse Transperfect for fees totaling over \$500,000 pursuant to a prior agreement for Cole's fees) and its subsequent conduct relating to the current invoices (receiving invoices addressed to Iconix without objection and acknowledging they were "working on them."). Iconix argues that this claim is barred by the existence of the express Agreement between Cole, his lawyers and TransPerfect, which dictates that Cole and/or his counsel has the sole responsibility for payment of TransPerfect's fees. Iconix further asserts the Agreement's merger clause bars reliance on prior communications or course of dealing. The court agrees. Accordingly, the second cause of action is dismissed

The fourth cause of action is for account stated. It relies on the allegation that Iconix received and retained the invoices for the Services without objection, thereby giving "assent to the balance express or implied". An account stated only requires an agreement independent of the underlying agreement, regarding the amount due on past transactions (*see Duane Reade v Cardinal Health, Inc.*, 21 AD3d 269, 269-270 [1st Dept 2005] In this case, the plaintiff relies on its claim for an implied-in-fact contract outlined above. Since the Court has determined that the

claim for breach of an implied contract is insufficient to proceed to discovery, the factual basis for that underlying liability is likewise insufficient to sustain the claim for account stated at this stage, particularly given the agreement that clearly states that the responsibility for paying the fees was exclusively that of Cole and/or his attorneys. Accordingly, the fourth cause of action against Iconix is dismissed. In motion sequence 002, Iconix's motion to dismiss is therefore granted in its entirety and the complaint is dismissed as against Iconix.

Iconix also seeks sanctions pursuant to 22 NYCRR § 130-1.1, arguing the claims were frivolous and without factual or legal basis. Sanctions are warranted only where the conduct is completely without merit. Given the somewhat unique nature of the implied contract and third-party beneficiary arguments—specifically the unsettled issue of finality regarding the advancement obligation and the interpretation of implied assent via course of dealing in light of an express contract naming a third party—the Court finds that the arguments raised by Plaintiff are not so devoid of merit as to be characterized as frivolous, vexatious, or malicious. Accordingly, the motion for sanctions is denied.

### **Motion Sequence 003**

Defendant Cole moves to dismiss the Amended Complaint based on CPLR § 3211(a)(3) (lack of legal capacity to sue), arguing that Plaintiff CCLLC is an unlicensed collection agency in Nevada, its state of organization. Cole contends that CCLLC is in the business of collecting debts, files numerous such actions, and because it is not licensed in Nevada, maintaining this suit constitutes a crime under NRS § 649.435. Cole argues courts should not become an accomplice to illegal conduct.

Plaintiff CCLLC asserts that lack of capacity under New York law typically requires the entity to have ceased to exist (e.g., dissolution or merger), neither of which applies here as CCLLC is a properly organized Nevada LLC qualified to do business in New York. Furthermore, CCLLC argues that compliance with a Nevada regulatory statute is irrelevant to its capacity to sue in New York. CCLLC claims the Nevada statute does not even apply because CCLLC's offices and business are conducted out of California, not Nevada, and it is not collecting a claim from a third party in Nevada.


The question of whether CCLLC's alleged failure to obtain a collection agency license in its state of organization deprives it of the fundamental legal capacity to sue under CPLR 3211(a)(3) presents a significant legal issue that is not conclusively determined by the presented material. Moreover, whether the Nevada statute applies to CCLLC, which conducts its business from California, remains a disputed factual issue. The Court finds that the arguments made by Cole are not frivolous, but they do not meet the high burden for dismissal at the pleadings stage. Accordingly, in motion sequence 003, the motion to dismiss is denied without prejudice to renew upon the completion of discovery as to the extent of CCLLC's operations in Nevada, if any, and whether their unlicensed status in Nevada forecloses them from attempting to collect debts in other states.

In motion sequence 002, the motion to dismiss is granted and the complaint is hereby dismissed as against the defendant Iconix. In motion sequence 003, the motion to dismiss is denied with leave to renew upon the completion of discovery.

Defendant Cole shall answer the Amended Complaint within 20 days of service upon him by NYSCEF of a copy of this decision with notice of entry.

The forgoing constitutes the decision and order of this court.

10/2/2025  
DATE

  
NICHOLAS W. MOYNE, J.S.C.

CHECK ONE:	<input type="checkbox"/>	CASE DISPOSED	<input type="checkbox"/>	DENIED	<input checked="" type="checkbox"/>	NON-FINAL DISPOSITION		
APPLICATION:	<input type="checkbox"/>	GRANTED	<input type="checkbox"/>		<input checked="" type="checkbox"/>	GRANTED IN PART	<input type="checkbox"/>	OTHER
CHECK IF APPROPRIATE:	<input type="checkbox"/>	SETTLE ORDER			<input type="checkbox"/>	SUBMIT ORDER		
	<input type="checkbox"/>	INCLUDES TRANSFER/REASSIGN			<input type="checkbox"/>	FIDUCIARY APPOINTMENT	<input type="checkbox"/>	REFERENCE