

Big Drop Inc. v Itria Ventures LLC

2025 NY Slip Op 33881(U)

October 10, 2025

Supreme Court, New York County

Docket Number: Index No. 650493/2025

Judge: Lyle E. Frank

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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

BIG DROP INC.

Plaintiff,

- v -

ITRIA VENTURES LLC,

Defendant.

-----X

INDEX NO. 650493/2025

MOTION DATE 06/30/2025

MOTION SEQ. NO. 002

**DECISION + ORDER ON
MOTION**

The following e-filed documents, listed by NYSCEF document number (Motion 002) 20, 21, 22, 23, 24, 26

were read on this motion to/for DISMISSAL.

This action arises out of allegations that defendant improperly sought receivables from several of plaintiff’s customers following an alleged breach of the receivables sale agreement (“RSA”) between non-party merchants and defendant. Defendant now moves to dismiss the amended complaint pursuant to CPLR §3211(a)(7). Plaintiff opposes the motion. For the reasons set forth below, the motion to dismiss is granted¹.

Background

On July 11, 2023, defendant, Itria, entered into the subject RSA with a series of non-party restaurant entities: Kissaki Hospitality Group LLC, Kissaki East Hampton O LLC, Kissaki HY LLC, Kissaki Omakase LLC, Kissaki UWS LLC, and Kissaki LLC, identified therein as “merchants” pursuant to which Itria purchased merchants’ existing and future accounts receivable. Non-party Igor Kanfer is the guarantor of the RSA and owner of both the non-party merchants and Big Drop.

¹ The Court would like to thank Cole Dorsey and Noah Lowen for their assistance in this matter.

The non-party entities subsequently breached the agreement and defendant served lien notices on plaintiff's account debtors. Plaintiff commenced the instant action alleging that defendant's conduct was wrongful, in bad faith and tortiously interfered with its contracts.

Standard of Review

It is well-settled that on a motion to dismiss for failure to state a cause of action pursuant to CPLR § 3211(a)(7), the pleading is to be liberally construed, accepting all the facts as alleged in the pleading to be true and giving the plaintiff the benefit of every possible inference. *See Avgush v Town of Yorktown*, 303 AD2d 340 [2d Dept 2003]; *Bernberg v Health Mgmt. Sys.*, 303 AD2d 348 [2d Dept 2003].

Moreover, the Court must determine whether a cognizable cause of action can be discerned from the complaint rather than properly stated. *Matlin Patterson ATA Holdings LLC v Fed. Express Corp.*, 87 AD3d 836, 839 [1st Dept 2011]. "The complaint must contain allegations concerning each of the material elements necessary to sustain recovery under a viable legal theory." *Id.* "Although on a motion to dismiss the complaint for failure to state a cause of action pursuant to CPLR 3211 (a)(7), the facts pleaded are presumed to be true and are accorded every favorable inference, where...the allegations consist of bare legal conclusions, as well as factual claims either inherently incredible or flatly contradicted by documentary evidence, they are not entitled to such consideration." *Ullmann v Norma Kamali, Inc.*, 207 AD2d 691, 692 [1st Dept 1994].

Discussion

Plaintiff's first cause of action alleges that defendant acted in bad faith, in violation of the Uniform Commercial Code ("UCC"), by sending lien notices to its customers. In support of its motion to dismiss defendant contends that its conduct was permitted, upon the non-party

merchants' material breach. Defendant cites to section 8(d) of the RSA that provides that defendant "may exercise any and all remedies available ... including without limitation: (1) notifying customers and other third parties ... of [Itria's] rights to Receivables in Approved Accounts[.]". *See* NYSCEF Doc. 14. Specifically, the RSA provides that the term receivables includes the receivables of merchant's subsidiaries and affiliated companies and, upon a material breach, of any new or existing company owned or controlled by merchant or any guarantor. *Id.*

The crux of plaintiff's opposition and the basis for its asserted causes of action, is that it is not liable to defendant because it is not a party to the RSA, thus only the non-party merchants, and not Big Drop, are liable for the debts.

Here, Plaintiff's assertion that Itria acted "without contractual authority" and "failed to disclose the amounts owed" is flatly contradicted by the documentary evidence, NYSCEF Doc. 16, the September 20, 2024, UCC lien notice, expressly identifies the Kissaki entities, references the underlying financing agreement, and specifies the exact amount due.

Defendant has established that its conduct was contractually authorized as the RSA's plain terms allow enforcement against "any company owned or controlled by Merchant or Guarantor," and Big Drop's pleading concedes common ownership through Kanfer. As such, the Court finds that plaintiff's allegations of bad faith are not viable.

As to the second cause of action, that defendant's efforts to collect receivables from its customers constitutes tortious interference with plaintiff's business relationships because defendant falsely advised to these customers that Big Drop owed money to Itria, that cause of action also fails.

To state a claim for tortious interference with contract, a plaintiff must allege (1) the existence of a valid contract, (2) the defendant's knowledge of that contract, (3) the defendant's

intentional procuring of the breach of that contract, and (4) damages. *111 W. 57th Inv. LLC v. 111 W57 Mezz Inv. LLC*, 220 AD3d 435, 436 [1st Dept 2023]. A tortious interference with contract claim should be dismissed where the plaintiff fails to sufficiently allege that the contract "would not have been breached 'but for' the defendant's conduct." *Id.*

Here, as indicated above defendant's actions were permitted under the terms of the RSA . Consequently, plaintiff's second cause of action is not viable. The Court has reviewed plaintiff's remaining contentions and finds them unavailing. Accordingly, it is hereby

ADJUDGED that the motion to dismiss is granted in its entirety; and it is further

ORDERED that the amended complaint is dismissed, and the Clerk of the Court shall enter judgment of dismissal accordingly.

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LYLE E. FRANK, J.S.C.

10/10/2025

DATE

CHECK ONE:

CASE DISPOSED
GRANTED DENIED
SETTLE ORDER
INCLUDES TRANSFER/REASSIGN

NON-FINAL DISPOSITION
GRANTED IN PART OTHER
SUBMIT ORDER
FIDUCIARY APPOINTMENT REFERENCE

APPLICATION:

CHECK IF APPROPRIATE: