

Low Overrun LLC v Remesch Media, LLC

2025 NY Slip Op 34153(U)

October 27, 2025

Supreme Court, New York County

Docket Number: Index No. 651411/2025

Judge: Mary V. Rosado

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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. MARY V. ROSADO PART 33M

Justice

-----X

LOW OVERRUN LLC

Plaintiff,

- v -

REMESCH MEDIA, LLC,

Defendant.

-----X

INDEX NO. 651411/2025

MOTION DATE 04/23/2025

MOTION SEQ. NO. 002

DECISION + ORDER ON MOTION

The following e-filed documents, listed by NYSCEF document number (Motion 002) 15, 16, 17, 18, 19, 20, 21

were read on this motion to/for DISMISS

Upon the foregoing documents, and after a final submission date of August 19, 2025, Defendant Remesch Media, LLC's ("Defendant") motion to dismiss the second, third, and fourth causes of action in Plaintiff Low Overrun LLC's ("Plaintiff") Complaint, and Plaintiff's request for punitive damages and attorneys' fees, is granted.

Plaintiff operates an ice cream shop known as Morgenstern's Finest Ice Cream. In November of 2024, Plaintiff contracted Defendant to manage its digital marketing. Allegedly, by February of 2025, Defendant was failing to meet its obligations, and Plaintiff expressed dissatisfaction with "the quantity or quality of influencers we need to make influencer marketing worth the effort." Plaintiff tried to terminate the contract, but Defendant allegedly refused. The parties tried to come to an agreement on the terms for termination, but could not, and Defendant allegedly effectively terminated the contract by ceasing all support and services to Plaintiff.

Plaintiff sues Defendant alleging breach of contract, negligent hiring and supervision, unjust enrichment, and bad faith. Defendant responds with a pre-answer motion to dismiss seeking dismissal of the negligent hiring and supervision, unjust enrichment, and bad faith claims, and

dismissal of the demand for punitive damages and attorneys' fees. Plaintiff does not oppose dismissal of the demand for punitive damages but opposes the remainder of the motion.

Defendant's motion is granted. The unjust enrichment claim is dismissed as duplicative of the breach of contract claim. Plaintiff concedes the unjust enrichment claim was pled in the event Defendant disputed the validity of the contract. However, Defendant has not moved to dismiss the breach of contract claim and accepts the validity of the contract, thus the unjust enrichment claim is duplicative (*see Corsello v Verizon New York, Inc.*, 18 NY3d 777 [2012]). The negligent hiring and supervision claim is likewise duplicative. Plaintiff fails to allege an independent duty Defendant owed and breached outside the scope of the duties owed and allegedly breached under the breach of contract claim (*see Dormitory Auth. v Samson Const. Co.*, 30 NY3d 704, 711-12 [2018]; *see also 99 Wall Dev., Inc., v Consigli & Associates, LLC*, 238 AD3d 502, 503 [1st Dept 2025]; *Ho v Star Contractors, Inc.*, 226 AD3d 511 [1st Dept 2024]). To the extent Plaintiff alleges damage to its reputation due to influencers retained by Defendant, these damages are encompassed in consequential damages under the breach of contract claim.

The fourth cause of action alleging bad faith is dismissed as duplicative as it is premised on the same facts as the breach of contract cause of action (*see Kim v Francis*, 184 AD3d 413, 414 [1st Dept 2020]; *see also MBLA Ins. Corp. v Countrywide Home Loans, Inc.*, 87 AD3d 287, 297 [1st Dept 2011] citing *Logan Advisors, LLC v Patriarch Partners, LLC*, 63 AD3d 440m 443 [1st Dept 2009]).¹ There is no opposition to dismissal of the demand for punitive damages, therefore, this demand is dismissed as abandoned (*see, e.g. Saidin v Negron*, 136 AD3d 458 [1st Dept 2016]).

¹ The fourth cause of action vaguely seeks damages for "the intentional acts, or the negligent, reckless, and careless acts of Defendants . . . [which] caused specified damages the Plaintiff (*sic*) and such breach was in bad faith." The Court interprets this as claim that the breach occurred in bad faith.

Finally, the motion to dismiss Plaintiff's demand for attorneys' fees is granted. The remedy of attorneys' fees must be based on contract or statute (*see City of New York v Zuckerman*, 234 AD2d 160 [1st Dept 1996]). Plaintiff does not allege or identify any statute which entitles it to recover attorneys' fees. Moreover, nowhere in the contract did the parties agree that a party who prevails in a dispute over the enforcement of the contract or to recover damages based on a default under the contract is entitled to a recovery of attorneys' fees (*see* NYSCEF Doc. 2). Plaintiff relies on indemnification clauses which states that if Plaintiff is sued or held liable for Defendant's negligence, then Defendant has to indemnify Plaintiff for, amongst other things, Plaintiff's attorneys' fees in defending against that claim. But that is inapplicable to the facts of this case, which does not allege a breach of the indemnification provisions or damages flowing from a claim Plaintiff was forced to defend (*see also Needham & Co., LLC v UpHealth Holdings, Inc.*, 212 AD3d 561, 562 [1st Dept 2023] [attorneys' fee provision in indemnification provision did not apply to intraparty claim at issue]). Therefore, Defendant's motion is granted.

Accordingly, it is hereby,

ORDERED that Defendant's motion to dismiss Plaintiff's second, third, and fourth causes of action, and Plaintiff's demand for attorneys' fees and punitive damages is granted, and these claims are hereby dismissed; and it is further

ORDERED that within twenty days of entry, counsel for Defendant shall serve an Answer to Plaintiff's Complaint and the remaining cause of action – namely Plaintiff's first cause of action alleging breach of contract; and it is further

ORDERED that the parties shall meet and confer immediately and submit a proposed preliminary conference order to the Court via e-mail to SFC-Part33-Clerk@nycourts.gov, but in no event shall the proposed preliminary conference order be submitted any later than November

19, 2025. If the parties have a serious discovery dispute requiring a conference, they shall notify the Court via e-mail; and it is further

ORDERED that if the parties are interested in utilizing this Court’s alternative dispute resolution program, they shall notify the Court so the appropriate referral order can be made; and it is further

ORDERED that within ten days of entry, counsel for Defendant shall serve a copy of this Decision and Order, with notice of entry, on all parties via NYSCEF.

This constitutes the Decision and Order of the Court.

10/27/2025
DATE

Mary V Rosado JSC
HON. MARY V. ROSADO, 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