

YA II PN, Ltd. v Baijiayun Group, Ltd.

2025 NY Slip Op 34693(U)

December 8, 2025

Supreme Court, New York County

Docket Number: Index No. 654443/2025

Judge: Joel M. Cohen

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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: COMMERCIAL DIVISION PART 03M

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YA II PN, LTD.

Plaintiff,

- v -

BAIJIAYUN GROUP, LTD.,

Defendant.

INDEX NO. 654443/2025

MOTION DATE 07/25/2025

MOTION SEQ. NO. 001

**DECISION + ORDER ON
MOTION**

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HON. JOEL M. COHEN:

The following e-filed documents, listed by NYSCEF document number (Motion 001) 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33 were read on this motion for SUMMARY JUDGMENT IN LIEU OF COMPLAINT.

Plaintiff YA II PN, Ltd. (“Yorkville” or “Plaintiff”), moves for summary judgment in lieu of complaint pursuant to CPLR 3213 in favor of Plaintiff and against Defendant Baijiayun Group Ltd. (“Baijiayun” or “Defendant”) for \$5,033,081.34 owed to Plaintiff, plus default interest that continues to accrue, pre-judgment interest, costs, legal fees, and expenses. Defendant opposes this motion, and filed a cross-motion pursuant to CPLR 3211(a)(7) and CPLR 3211(a)(8) dismissing this action in its entirety. For the following reasons, Plaintiff’s motion is denied, and Defendant’s cross-motion is denied.

Pursuant to CPLR 3213, a party may commence an action by motion for summary judgment in lieu of complaint when the action is “based upon an instrument for the payment of money only or upon any judgment” (*Oak Rock Fin., LLC v Rodriguez*, 148 AD3d 1036, 1039 [2d Dept 2017]). An “instrument for the payment of money only” is one that “requires the defendant to make a certain payment or payments and nothing else” (*Seaman-Andwall Corp. v*

Wright Mach. Corp., 31 AD2d 136, 137 [1st Dept 1968]; *Weissman v Sinorm Deli, Inc.*, 88 NY2d 437, 444 [1996]). That fact that a note is convertible is not disqualifying (*Simon v Indus. City Distillery, Inc.*, 159 AD3d 505 [1st Dept 2018] [“The conversion option contained in the note does not alter the fact that the note is “an instrument for the payment of money only” and a proper subject of a motion pursuant to CPLR 3213”]; *Anstalt v Moocho, Inc.*, 2020 NY Slip Op. 30743[U], 3 [Sup Ct, NY County 2020] [finding that “convertible notes can be subject CPLR § 3213”]) “Once the plaintiff submits evidence establishing its prima facie case, the burden then shifts to the defendant to submit evidence establishing the existence of a triable issue of fact with respect to a bona fide defense.” (*Griffon V. LLC v 11 East 36th, LLC*, 90 AD3d 705, 707 [2d Dept 2011]).

Plaintiff has submitted evidence that (i) Yorkville and Baijiayun executed a Standby Equity Purchase Agreement (the “SEPA”) dated December 6, 2024, pursuant to which Yorkville agreed to make certain cash advances to Baijiayun, with Baijiayun’s obligation to repay those advances to “be evidenced by convertible promissory notes” executed by Baijiayun in favor of Yorkville (NYSCEF 5 [Matthew Beckman Affirmation (“Beckman Affirm”)] ¶3; NYSCEF 6); (ii) that Yorkville made two cash advances to Baijiayun in the amounts of \$3 million each, both evidenced by a convertible promissory note, on December 6, 2024 (the “First Note”) and December 19, 2024 (the “Second Note”) (NYSCEF 7, 8); (iii) that Yorkville exercised its right to convert a portion of the Original Principal Amount into shares on February 14, 2025 and February 21, 2025 pursuant to Section 3 of the Second Note, leaving \$1,897,178.00 in Principal outstanding (Beckman Aff. ¶ 6); (iv) that an Event of Default occurred under Section 2(a) of the Notes because the Company’s Ordinary Shares were delisted from the Nasdaq stock exchange as of May 14, 2025, and remained delisted for 10 consecutive Trading Days thereafter (Beckman

Aff. ¶ 8-10; NYSCEF 9); and (v) Defendant failed to respond to the Default Notice or remitted the demanded payment (Beckman Aff. ¶ 12; NYSCEF 10, 11).

However, Plaintiff has not submitted conclusive evidence of a sum certain due and owing under the Notes. Plaintiff avers that as of the date of this filing, the total amount due under the Notes totals \$5,033,081.34, representing the total outstanding Principal amount of \$4,897,178.00, together with accrued and unpaid interest in the amount of \$135,903.34 (Beckman Aff. ¶ 13). The referenced affirmation does not provide any business record, such as a payment history or payoff quote, to document or otherwise support that this amount is owed. Accordingly, Plaintiff has not established its *prima facie* case (see *Bank of New York Mellon v Giammona*, 219 AD3d 436, 439 [2d Dept 2023] [“An affiant's assertion regarding the defendant's default, without the business records upon which he or she relied in making such an assertion, constitutes inadmissible hearsay”]).

Moreover, Defendant has raised issues of fact as to the interest amounts set forth in Plaintiff's conversions. As detailed in the affirmation submitted by Defendant's Chief Financial Officer, (NYSCEF 16 [Fangfei Liu (“Liu Affirm”)] ¶¶ 8–15; NYSCEF 18-20), Plaintiff exercised nine conversions between January and February 2025, exchanging portions of debt for equity totaling at least \$2.85 million. Each conversion notice contains a separate line labeled “accrued interest to be converted” (NYSCEF 18). Yet the Notes expressly provide that no interest accrues prior to default. Section (1)(b) of the Notes provides as follows: “(b) Interest Rate and Payment of Interest. Interest shall accrue on the outstanding Principal balance hereof at an annual rate equal to 0% (“Interest Rate”), which Interest Rate shall increase to an annual rate of 18% upon the occurrence of an Event of Default (for so long as such event remains uncured)” (NYSCEF 7 §(1)(b); NYSCEF 8 §(1)(b)). Defendant asserts that this unauthorized interest

affects the amount claimed due. Plaintiff fails to respond to this argument in reply, other than to argue that the amount due can be determined later.

Additionally, Defendant has raised a potential defense on the merits of Plaintiff's claim. As noted, the basis of Plaintiff's motion is that an Event of Default occurred under Section 2(a) of the Notes because the Company's Ordinary Shares were delisted from the Nasdaq stock exchange as of May 14, 2025, and remained delisted for 10 consecutive Trading Days thereafter. Defendant asserts that Plaintiff engaged in a pattern of large-volume sales and pre-sales of Defendant's shares on the open market, deliberately driving down the stock price below Nasdaq's \$1.00 minimum bid requirement (Liu Aff. ¶¶ 16–27; NYSCEF 21-23).

Specifically, Defendant contends that “[b]etween December 2024 and February 2025, Defendant's stock price fell from approximately \$9.25 to \$0.40 per share (NYSCEF 21). On January 29, 2025, Plaintiff had already presold 419,754 shares in excess of those issued, and by February 21, 2025, cumulative pre-sales exceeded 1.2 million shares (NYSCEF 18, 22, 23). Nasdaq subsequently issued a Staff Delisting Determination on March 14, 2025, citing January 29 through March 13, 2025 as the deficiency period, the same window during which Plaintiff's conversion based trading activity caused the collapse (NYSCEF 24). Thus, Defendant argues that Plaintiff used that delisting, which purportedly resulted from its own trading conduct, to declare a default, accelerate the Notes, and demand repayment at an 18 percent default interest rate, and that Plaintiff's actions were intentionally structured to generate profit both from the trading spread and from the default it had manufactured.

While Plaintiff argues that the “prevention doctrine” upon which Defendant relies is generally limited to conduct that undermines the counterparty's ability to satisfy a condition precedent (*see Gemmon LLC v Becker*, 148 AD3d 579, 580 [1st Dept 2017]), the prohibition

against a “self-created default” has also been stated more generally by recognizing that a party “cannot, by breach of contract, create a condition which naturally brings [its counterparty] into default and then declare that the [counterparty] under the contract has forfeited all rights by reason of the default which their acts have caused” (*Gardner v The Roycrofters*, 134 AD 45, 48-49 [3d Dept 1909], *affd.*, 197 NY 511 [1909]). Moreover, it has been observed that the prevention doctrine is simply “a variant of the implied covenant of good faith and fair dealing” (*Thor Properties, LLC v Chetrit Group LLC*, 91 AD3d 476, 477 [1st Dept 2012]).

While Plaintiff argues that the covenant of good faith and fair dealing does not apply here because “[t]he Notes contain detailed terms governing Yorkville’s right to convert the Notes ‘into Ordinary Shares’ of the Company” and “Baijiayun does not allege that Yorkville’s exercise of its conversion rights violated those terms” (NYSCEF 33 at 5), Defendant has raised an issue of fact that, if pled and proven, could demonstrate that Plaintiff’s actions were undertaken in bad faith to create the default, thereby violating the implied covenant by depriving Defendant of the fruits of the contract (*511 W. 232nd Owners Corp. v Jennifer Realty Co.*, 98 NY2d 144, 153 [2002] [“While the duties of good faith and fair dealing do not imply obligations ‘inconsistent with other terms of the contractual relationship’, they do encompass ‘any promises which a reasonable person in the position of the promisee would be justified in understanding were included’”] [citations omitted]).

Since the Court finds that Defendant has raised factual disputes, summary judgment is inappropriate at this stage and the proceeding will be converted to a plenary action (*Punch Fashion, LLC v Merchant Factors Corp.*, 180 AD3d 520, 521 [1st Dept 2020]).

The Court has considered Defendant's jurisdictional and procedural arguments and finds them unavailing.¹

Accordingly, it is:

ORDERED that Plaintiff's Motion for summary judgment in lieu of complaint is **DENIED**; it is further

ORDERED that Defendant's Cross-Motion seeking dismissal of this action is **DENIED**; it is further

ORDERED that Plaintiff shall file and serve a Complaint upon Defendant's attorney within 30 days of this Decision and Order and Defendant shall answer or otherwise respond to the Complaint within 20 days after service thereof; and it is further

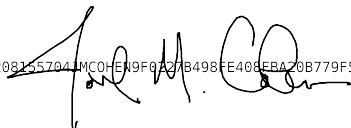
ORDERED that the parties appear for a preliminary conference on **January 27, 2026, at 10:00 a.m.**, with the parties circulating dial-in information to chambers at SFC-Part3@nycourts.gov in advance of the conference.²

¹ In the contract, Baijiayun irrevocably consented to personal jurisdiction in New York and waived any statutory requirements for service of process in agreeing to service "by registered or certified mail," with such "service to become effective thirty (30) days after the date of mailing." (Notes §§ 8(b)(i)-(ii), (iv)). Baijiayun further consented to delivery of any notices or other communications under the Notes by email (*id.* § 5).

² If the parties agree on a proposed preliminary conference order in advance of the conference date (consistent with the guidelines in the Part 3 model preliminary conference order, available online at <https://www.nycourts.gov/LegacyPDFS/courts/comdiv/NY/PDFs/Part3-Preliminary-Conference-Order.pdf>), they may file the proposed order and email a courtesy copy to chambers with a request to so-order in lieu of holding the conference.

This constitutes the Decision and Order of the Court.

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JOEL M. COHEN, J.S.C.

12/8/2025
DATE

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