

IPFS Corp. v J&W Ins. Brokerage, Inc.

2026 NY Slip Op 30392(U)

January 30, 2026

Supreme Court, Kings County

Docket Number: Index No. 534570/2025

Judge: Reginald A. Boddie

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At an IAS Commercial Part 12 of the Supreme Court of the State of New York, held in and for the County of Kings, at the Courthouse, located at 360 Adams Street, Borough of Brooklyn, City and State of New York on the 30th day of January 2026.

P R E S E N T:

Honorable Reginald A. Boddie
Justice, Supreme Court

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IPFS CORPORATION,

Plaintiff,

Index No. 534570/2025

-against-

Cal. No. 7 MS 1

J&W INSURANCE BROKERAGE, INC.,

Decision and Order

Defendant.

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The following e-filed papers read herein:

NYSCEF Doc. Nos.

MS 1

8-26

Upon the foregoing papers and after oral argument, defendant’s motion seeking an order pursuant to CPLR 3211[a][1] and [a][7] dismissing plaintiff’s Verified Complaint is decided as follows:

The following is gleaned from the Verified Complaint: on or about August 21, 2024, plaintiff, IPFS Corporation (“plaintiff” or “IPFS”), and nonparties, Pleasantview Knott, LLC and Dutch Perring Owner, LLC (collectively, the “Insured”) entered into an Insurance Premium Finance Agreement and Schedule of Policies (the “Finance Agreement”), that was submitted by defendant, J&W Insurance Brokerage, Inc. (“defendant” or “J&W”) to IPFS. IPFS financed the premiums of certain commercial insurance policies (the “Policies”) that were purchased by the

Insured through the services of J&W based upon the Finance Agreement. The Policies included a package of commercial liability policies issued by Lloyd's of London (the "Lloyd's Policies") and five excess liability policies issued by other insurance carriers (collectively, the "Excess Policies"). According to plaintiff, under the Finance Agreement, defendant made various representations and warranties including, among other things, that the information contained in the Schedule of Policies is true and correct, including the identity of the insurers' general agents.

Following the Insured's default, IPFS represents that it sent written notice to the Insured of IPFS's intent to cancel if the Insured's default was not cured within ten days. On December 19, 2024, IPFS alleges that the Notice of Intent to Cancel was mailed to both the Insured and defendant advising that if IPFS did not receive payment by January 6, 2025, the Policies would be cancelled. As the payment default was not cured, on January 7, 2025, IPFS issued a Notice of Cancellation for a cancellation effective as of January 10, 2025.

According to plaintiff, following its request for cancellation of the Policies, it learned that, although RT Specialty LLC ("RT") was the agent for the Excess Policies, CIBA, rather than RT, was the agent for the Lloyd's Policies. Plaintiff asserts that the declarations on the Lloyd's Policies also show that they were written with CIBA and not RT. Based on defendant's failure to disclose CIBA on the Finance Agreement, plaintiff claims defendant breached the representations and warranties set forth in the Finance Agreement, resulting in the instant action.

By way of its pre-answer motion to dismiss the complaint, defendant contends that IPFS is attempting to recoup unrecovered premiums from the insurance broker rather than the insolvent insureds under the theory that J&W "misidentified" the agent for one specific policy in the Finance Agreement, which supposedly prevented IPFS from canceling that policy. According to defendant, documentary evidence refutes the claim that it identified the wrong agent since the

“Commercial Lines Declarations Page” for the Lloyd’s Policy identifies RT as the “Producer” (i.e., agent) and RT purportedly acknowledged in writing that it was the proper agent for the policy at issue.

In addition, defendant argues that any loss suffered by IPFS was caused by the Insured being insolvent and in receivership, rather than a misidentification of the proper agent by defendant. In this regard, defendant points out that the Insured was placed into receivership by the Circuit Court for Baltimore, Maryland (“Receivership Action”). Further, pursuant to a Notice of Automatic Stay Arising from Appointment of Receiver dated May 9, 2025, J&W was notified of the Receivership Action and advised that, pursuant to Maryland Law, the entry of a Receivership Order on February 5, 2025 triggered an automatic stay prohibiting the cancellation of the subject insurance policies.

Lastly, defendant submits the claim for unjust enrichment must be dismissed since a valid written contract governs the dispute. In any event, defendant argues that plaintiff fails to allege that J&W retained any portion of the unearned premiums or otherwise benefitted from the noncancellation of the insurance policies.

In opposition, plaintiff counters that defendant’s argument that documentary evidence conclusively establishes its entitlement to dismissal is contradicted by IPFS’ own documentary evidence. According to plaintiff, the fact that RT was not the agent for the pertinent policy is made clear in correspondence from CIBA’s counsel as well as the declarations of the Lloyd’s Policy. It is plaintiff’s position that the declarations on the Lloyd’s Policy show that they were written with CIBA, which should have made clear defendant’s obligation to identify CIBA on the Finance Agreement.

Regarding its unjust enrichment claim, plaintiff contends that it is entitled to plead in the alternative. Secondly, that defendant's self-serving assertion that it did not benefit from the non-cancellation is not a basis to dismiss this claim and misses the mark with respect to defendant's breach of its warranties and representations to IPFS. Moreover, plaintiff argues that defendant benefitted from its breaches, as it was able to obtain further business from the Insured, among other things, and receive the benefit of the Finance Agreement.

In reply, defendant argues that the letter from CIBA proffered by plaintiff intending to show that RT lacked underwriting authority proves the opposite, specifically, that it confirms CIBA received and processed the cancellation request "from RT Specialty." Further, that this proves that the communication channel J&W identified was valid and functional. To the extent there was a delay in RT transmitting that notice to CIBA, or CIBA processing it, defendant contends that such delay constitutes an operational failure by third parties, not a breach of warranty by J&W.

Finally, defendant argues that plaintiff is ignoring the superseding cause of its loss, which is the receivership. Specifically, that the Receivership Order entered on February 5, 2025, which was only 26 days after the attempted cancellation, froze the insurer's assets before any refund could reasonably be collected. Thus, that the proximate cause of plaintiff's loss is the borrower's insolvency, not the broker's identification of the wholesaler on the finance agreement.

Discussion

"A motion to dismiss a complaint pursuant to CPLR 3211 (a) (1) may be granted only where the documentary evidence utterly refutes the complaint's factual allegations, conclusively establishing a defense as a matter of law" (*Gorbatov v Tsirelman*, 155 AD3d 836, 837 [2d Dept 2017] [citations omitted]). "In considering a motion to dismiss a complaint for failure to state a


cause of action pursuant to CPLR 3211 (a) (7), the sole criterion is whether, from the complaint's 'four corners factual allegations are discerned which taken together manifest any cause of action cognizable at law'" (*Stewart Tit. Ins. Co. v Bank of N.Y. Mellon*, 154 AD3d 656, 662 [2d Dept 2017] [*citing to Guggenheimer v Ginzburg*, 43 NY2d 268, 275 [1977]]).

Here, the documentary evidence fails to utterly refute plaintiff's allegations. Moreover, defendant fails to provide clarity regarding whether RT or CIBA is the agent for the Lloyd's Policy. Put differently, did defendant misidentify the agent for the Lloyd's Policy?

Although defendant's argument regarding proximate cause may or may not have merit, such argument is more appropriate for a motion seeking summary judgment under CPLR 3212. However, that part of defendant's motion seeking dismissal of plaintiff's claim for unjust enrichment is granted. It is undisputed that an agreement governs this dispute. As such, an unjust enrichment claim is precluded.

Accordingly, defendant's motion is granted to the extent that plaintiff's claim for unjust enrichment is hereby dismissed. The motion is otherwise denied. Any argument not explicitly addressed herein was considered and deemed to be without merit.

ENTER:



Honorable Reginald A. Boddie
Justice, Supreme Court

HON. REGINALD A. BODDIE
J.S.C.