Division 1181 Amalgamated Tr. Union -
N.Y. Empls. Pension Fund v
New York City Dept. of Educ.

2026 NY Slip Op 30420(U)

January 30, 2026

Supreme Court, Kings County

Docket Number: Index No. 500717/2022

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, at 360 Adams Street, Brooklyn, New York, on the 30th day of January 2026

PRESENT:

HON. REGINALD A. BODDIE,
Justice.
---X

DIVISION 1181 AMALGAMATED TRANSIT UNION – NEW YORK EMPLOYEES PENSION FUND,

Plaintiff,

-against-

NEW YORK CITY DEPARTMENT OF EDUCATION, JOFAZ TRANSPORTATION, INC., ALLIED TRANSIT CORP., PRIDE TRANSPORTATION SERVICES, INC., and QUALITY TRANSPORTATION CORP.,

Defendants.
---X

Index No. 500717/2022

Mot. Seq. 8 - 11

Decision and Order

The following e-filed papers read herein:	NYSCEF Doc Nos.:
Notice of Motion/Order to Show Cause/ Petition/Cross Motion and Affidavits (Affirmations) Annexed	191-200, 201-251, 252-308
Opposing Affidavits/Answer (Affirmations)	325-336, 337-348, 349-358, 359-371
Affidavits/ Affirmations in Reply	374, 375, 376, 377-387
Other Papers:	

Upon the foregoing papers, plaintiff Division 1181 Amalgamated Transit Union – New York Employees Pension Fund ("Plaintiff" or the "Fund") moves for a partial summary judgment order, pursuant to CPLR 3212, ruling that defendants Jofaz Transportation, Inc. ("Jofaz"), Allied

Transit Corp. ("Allied"), Quality Transportation Corp. ("Quality") and Pride Transportation Services, Inc. ("Pride") (collectively, the "Defendant Contractors" and individually, a "Defendant Contractor") have unambiguous contractual obligations relating to the Fund arising from the Employee Protection Provisions ("EPP") in their respective contracts (collectively, the "Contracts" and individually, a "Contract") with defendant New York City Department of Education ("DOE"), for any employees the Defendant Contractors hired from the "Master Seniority Lists" referenced in the EPP, provided that such employees previously participated in the Fund and did not exercise any option to withdraw from the Fund ("Fund Participation Employees") (motion sequence number 8). In its motion, Plaintiff seeks a ruling on part of its breach of contract causes of action against defendants Jofaz, Allied, Pride, Quality and/or the DOE ("collectively, "Defendants"), namely, that the EPP imposes specific, unambiguous contractual obligations on the Defendant Contractors to do that which the EPP provides they are to do.

Quality and Pride move for an order, pursuant to CPLR 3212, granting summary judgment in their favor and dismissing Plaintiff's cause of action interposed against them in the complaint, namely Plaintiff's first cause of action for breach of contract (motion sequence number 9).

Jofaz and Allied move for an order, pursuant to CPLR 3212, granting summary judgment in their favor and dismissing Plaintiff's cause of action asserted against them in the complaint, to wit Plaintiff's first cause of action for breach of contract (motion sequence number 10).

The DOE moves for an order, pursuant to CPLR 3212, granting summary judgment in its favor and dismissing Plaintiff's complaint as to the DOE, predicated on the DOE's alleged breach of contract alleged in Plaintiff's second cause of action (motion sequence number 11).

BACKGROUND

The Parties

In this action, pitting Plaintiff, a pension fund, against the DOE and DOE school bus transportation contractors, Plaintiff claims, as a purported third-party beneficiary to contracts between the DOE and the Defendant Contractors, that the DOE is liable for pension fund contributions that such contractors - which had no collective bargaining agreement ("CBA") with Plaintiff to make pension contributions - allegedly owed but failed to pay (*see* NYSCEF Doc No. 308, memo. of law at 7). On this basis, Plaintiff has interposed two causes of action in the complaint, the first, a breach of contract cause of action against the Defendant Contractors (namely, Jofaz, Allied, Pride and Quality) and the second a breach of contract cause of action against the DOE (*see* NYSCEF Doc No. 2, complaint ¶¶ 59-67, 70-77).

Plaintiff, a multiemployer defined benefit pension plan, provides pensions to participants from a common pool of assets originating from payments by employers to Plaintiff on behalf of their covered employees pursuant to contractual obligations, as well as from employees via withholdings emanating from their paychecks (*id.* ¶ 1).[1] The Fund's participants were and are employed by school bus transportation companies as drivers of school buses, attendants or escorts on school buses, and in related positions, associated with the transportation of children enrolled in New York City schools (*id.* ¶ 14). Plaintiff alleges that the companies perform such work pursuant to contracts between the individual company, including each of the Contractors, and the DOE (*id.*).

The Genesis of the Parties' Dispute

In 1979, the DOE issued solicitations for bids on contracts for school bus routes purportedly bereft of provisions affording industry personnel parity with the wages and benefits

[1] In a defined benefit pension plan, the assets of the pension plan are pooled and deployed to pay the pensions owed by the pension plan to qualified participants (*id.* ¶ 1).

of New York City Transit Authority employees (*id.* ¶ 15). As a result, employees of the DOE's contractors, who were represented by Amalgamated Transit Union Local 1181-1061 (the "Union"), undertook a strike on February 15, 1979 (*id.* ¶ 16). The three-month-long strike was ultimately resolved through an agreement between the DOE, the Union and the DOE's then-contractors, negotiated before the Honorable Milton Mollen, the presiding Justice of the Appellate Division, Second Department, commonly referred to as the "Mollen Agreement" (*id.* ¶ 17).

The Mollen Agreement set forth the negotiated EPP, which provided employees of the DOE's contractors agreed-upon minimum wages and benefits, which the DOE agreed to incorporate into its school bus transportation contracts (*id.* ¶ 18). The EPP set forth in the Contracts has been present in DOE school bus contracts continuously since 1979 (*id.* ¶ 19). At all relevant times, the Contracts between the DOE and the Contractors contained, and continue to contain, the EPP (*id.* ¶ 21). Paragraph 1 of the EPP requires the DOE to compile and maintain the following data:

> There shall be established two industry-wide Master Seniority Lists [(the "Lists")]. One list shall be composed of all operators (drivers), mechanics, and dispatchers and the other list shall be composed of escorts . . . who were employed as of June 30, 2010, under a contract between their employers and the Board for the transportation of school children . . . who are furloughed or become unemployed as a result of loss of contract . . . by their employers, or as a result of a reduction in service directed by the Board . . . .

(NYSCEF Doc No. 3, Extension and Sixteenth Amendment Agreement of Special Education Pupil Transportation Requirements Contracts ["Amended Transportation Contract"] ¶ [H] [1]).

Plaintiff posits that under the EPP, the DOE requires Defendant Contractors, when they hire employees from the Lists, to maintain those employees' wages and benefits, including making requisite payments to the Fund for employees hired by the Contractors from the Lists who previously participated in the Fund to ensure that those employees continue to earn a pension from

the Fund (*see* NYSCEF Doc No. 2, complaint ¶ 24). Paragraph 1 of the EPP references the Fund and provides that employees hired by the Contractors from the Lists who previously participated in the Fund shall be entitled to continue their participation in the Fund, providing that "[a]ll operators (drivers), mechanics, dispatchers and escorts . . . on the Master Seniority Lists who participated in the Division 1181 A.T.U. - New York Employees Pension Fund . . . as of June 30, 2010, and who do not exercise their option to withdraw from the Fund . . . shall continue to participate in such Pension Plan" (*see* NYSCEF Doc No. 3, Amended Transportation Contract ¶ [H] [1]).

Plaintiff relies on paragraph 4 of the EPP in support of its position that the EPP confirms the obligation of the Contractors to sign agreements with, and to pay money to, the Fund on behalf of those employees that they hire from the Lists who previously participated in the Fund (*see* NYSCEF Doc No. 2, complaint ¶ 26). Paragraph 4 of the EPP, which references the Fund, reads, in pertinent part, as follows:

> The Contractor shall sign an agreement with Division 1181 A.T.U. – New York Employees Pension Fund . . . to participate in such plan on behalf of all operators (drivers), mechanics, dispatchers and escorts . . . who appear on the Master Seniority Lists and who participated in the Fund and Plan as of June 30, 2010 . . . The Contractor shall file a copy of the executed agreement with the Trustees of the Fund . . . to participate in said Fund . . . and with the Director [of DOE's Office of Pupil Transportation ("OPT")] before the start of any school bus service under this Contract.

(NYSCEF Doc No. 3, Amended Transportation Contract ¶ [H] [4]).

Based on the foregoing, Plaintiff opines that the Fund is a third-party beneficiary of the EPP and the express requirement that the Contractors sign separate agreements with the Fund bespeaks the intent that the Fund be permitted to enforce the obligations the EPP imposed upon the Contractors relating to the Fund (*see* NYSCEF Doc No. 2, complaint ¶ 26). Plaintiff contends

that in addition to requiring the Contractors to sign agreements to participate in the Fund, paragraph 4 of the EPP requires the Contractors: (i) to pay money to the Fund at rates set by the EPP on behalf of those employees the Contractors hire from the Lists who previously participated in the Fund; and (ii) to withhold monies at rates set by the EPP from the paychecks of the same employees and to remit such monies at the behest of the subject employees to the Fund (*id.* ¶ 27). Plaintiff alleges that by failing to tender the monies in question to the Fund as required by the EPP, the Contractors breached their Contracts (*id.* ¶ 27).

Plaintiff avers that paragraph 4 of the EPP obligates the Contractors to pay to the Fund for drivers, mechanics and dispatchers as follows:

> The Contractor shall contribute $74.40 per week per operator (driver), mechanic and dispatcher on the Master Seniority List, and participating in the . . . Fund . . . for forty weeks each year . . . or such greater amount as may be required, based on contributions by contractors on behalf of the majority of employees participating in the Fund . . . pursuant to a collective bargaining agreement with Local 1181-1061.

(NYSCEF Doc No. 3, Amended Transportation Contract ¶ [H] [4]). Paragraph 4 of the EPP requires the Contractors to withhold from the paychecks of their Fund participant employees hired from the Lists and . . . pay to the Fund, for drivers, mechanics and dispatchers, as follows: "[t]he Contractor shall withhold $38.50 a week from each operator, mechanic and dispatcher participating in [the] Fund . . . for forty weeks each year . . . or such greater amount as may be required based on contributions of a majority of the . . . drivers . . . mechanics or dispatchers contributing to the Fund . . . ." (*id.*).

Paragraph 4 of the EPP specifies that "[t]he Contractor shall pay all such amounts to the Fund," referring to both the money the Contractors are to pay to the Fund as well as to the money that Contractors are to withhold from their employees' paychecks and pay to the Fund, "within

seven days after the end of each payroll period" (*id.*). As such, Plaintiff argues that, even though some of the DOE's contractors, including the Defendant Contractors, are not parties to collective bargaining agreements with the Union obligating them to make any payments to the Fund, the EPP nevertheless mandates that the Contractors: (i) enter into agreements with the Fund to participate in the Fund; (ii) file copies of such agreements with both the Fund and the DOE; and (iii) make payments to the Fund at specified rates on behalf of those employees who were already Fund participants at the time that they were hired by the Contractors from the Lists (*see* NYSCEF Doc No. 2, complaint ¶ 31). Moreover, Plaintiff underlines that the EPP obligates the DOE to require each Contractor to adhere with these obligations (*id.*).

Paragraph 5 of the EPP features provisions relating to enforcement of the EPP. Paragraph 5 of the EPP contains a provision known as the "Attachment Procedure Obligation," which provides that:

> In addition to any other remedies provided in the contract between [the DOE] and the contractor . . . if the contractor is found to be in violation of the foregoing Employee Protection Provisions regarding the payment of . . . pension contributions, or other aspects of compensation . . . then the Director of the [DOE's] Office of Pupil Transportation . . . shall withhold the appropriate amounts from any payments due to the contractor and pay them directly to the applicable union for the benefit of the employees affected, to the Division 1181 A.T.U. – New York Employees Pension Fund or other applicable union pension fund . . . .

(NYSCEF Doc No. 3, Amended Transportation Contract ¶ [H] [5]). In light of the foregoing, Plaintiff contends that the Attachment Procedure Obligation manifests an intent that the Fund be in a position to enforce the obligations the EPP imposed upon the Contractors relating to the Fund (*see* NYSCEF Doc No. 2, complaint ¶ 34).

Paragraph 5 of the EPP further provides that "[i]n the event that any contractor willfully fails to comply, [the DOE] shall act to cancel such contractor's contract (NYSCEF Doc No. 3,

Amended Transportation Contract ¶ [H] [5]). Plaintiff interprets paragraph 5 of the EPP as: (i) requiring the DOE, upon being notified that a Contractor failed to make payments to the Fund that are due under the EPP, to withhold payment to the Contractor and instead to remit the monies owed to the Fund; and (ii) obligating the DOE to terminate the Contract of any Contractor that willfully fails to comply with its obligations to the Fund under the EPP (*see* NYSCEF Doc No. 2, complaint ¶ 36).

Defendants' Alleged Actions Giving Rise to Plaintiff's Suit

Plaintiff asserts that Defendants undertook the actions delineated below, prompting Plaintiff to commence this action. In 2014, Plaintiff avers that the Contractors hired drivers and escorts to fill vacant positions through a process implemented under the auspices of the DOE referred to as a "Master Pick" (the "2014 Master Pick") (*id.* ¶ 37). Plaintiff contends that a myriad of the drivers and escorts the Contractors hired via the 2014 Master Pick (the "2014 Master Pick Employees") were Fund participants whose names the DOE had placed on the Lists pursuant to the EPP (*id.*).

Plaintiff claims that during the 2014 Master Pick, various 2014 Master Pick Employees inquired of the DOE whether payments would be made to the Fund at their behest were they to accept positions with the Contractors (*id.* ¶ 38). Plaintiff asserts in the complaint that school bus drivers and escorts sought this information as their right to receive retirement benefits from the Fund hinges on the subject payments (*id.*). Indeed, Plaintiff alleges that these employees would not receive any credit from the Fund towards qualifying for a pension from the Fund if they worked for the Contractors unless the Contractors were required to remit payments to the Fund on their behalf (*id.*).

Plaintiff asserts that DOE representatives assured the subject employees, the Union and the Fund that the EPP applied and that the Contractors would be required to make the payments at issue to the Fund (*id.* ¶ 39). Plaintiff argues that, absent these statements emanating from DOE representatives, 2014 Master Pick Employees would not have jeopardized their pension benefits from the Fund by accepting employment with the Contractors (*id.*). Plaintiff contends that by signing the Contracts containing the EPP, and hiring 2014 Master Pick Employees, the Contractors became contractually obligated, pursuant to paragraph 4 of the EPP, to sign agreements with the Fund to participate in the Fund and to make payments to the Fund on behalf of those 2014 Master Pick Employees at the rates set in the EPP (*id.* ¶ 40).

On February 3, 2014, the Fund notified each Contractor that payments were purportedly due with regard to the 2014 Master Pick Employees and sent each Contractor for execution an agreement for the Contractor to participate in the Fund (*id.* ¶ 41). Plaintiff contends that the Contractors have performed work under the Contracts with 2014 Master Pick Employees notwithstanding having never executed the requisite agreements to participate in the Fund and have never made payments to the Fund on behalf of the subject employees (*id.* ¶ 42). Plaintiff avers that as the Contractors continue to perform DOE work while employing 2014 Master Pick Employees as drivers and escorts, without making payments to the Fund required pursuant to paragraph 4 of the EPP, monies are due and owing to the Fund under the Contracts (*id.* ¶ 43).

Plaintiff asserts that it notified the DOE of the Contractors' failure to sign the required agreements with the Fund, coupled with their failure to make the payments owed to the Fund pursuant to the EPP (*id.* ¶ 44). However, Plaintiff alleges that the DOE has refused: (i) to require the Contractors to fulfill their contractual obligations to the Fund; (ii) to withhold the appropriate amounts due to the Fund from any payments due to the Contractors and to remit such amounts to

the Fund in accordance with the Attachment Procedure Obligation; and (iii) to terminate the Contractors' Contracts (*id.*).

Beginning in March 2014, Plaintiff contends that it submitted requests to the DOE (the "Attachment Requests") asking the DOE to enforce the Attachment Procedure Obligation given the Contractors' ongoing failure to pay the monies owed to the Fund pursuant to the EPP (*id.* ¶ 45). Plaintiff underlines that the notice from the Fund included the necessary "finding" under the EPP for the DOE to enforce the Attachment Procedure Obligation (*id.*). Plaintiff emphasizes that, on various occasions since the EPP was first incorporated into DOE contracts in 1979, when the Fund submitted Attachment Requests to the DOE regarding payments owed to the Fund by DOE contractors other than Defendant Contractors, the DOE acted upon the Fund's Attachment Requests, including through the DOE's withholding of payments from said contractors and remitting such payments directly to the Fund (*id.* ¶ 46). In those instances, Plaintiff contends that the DOE did not take the position that any "finding" was required beyond the information set forth in the Attachment Requests submitted to the DOE by the Fund (*id.*).

Plaintiff asserts that the DOE has refused to honor the Fund's Attachment Requests applicable to the Defendant Contractors (*id.* ¶ 48). Plaintiff contends that by submitting the Attachment Requests to the DOE, the Fund satisfied the conditions precedent to the DOE enforcing the Attachment Procedure Obligation against the Contractors (*id.* ¶ 49). Plaintiff claims that: (i) the Contracts are clear that the EPP is a part of each Contract; (ii) the DOE informed 2014 Master Pick Employees, the Union and the Fund that the EPP would apply; and (iii) no party disputes that the Contractors: (a) have not made payments to the Fund on behalf of their 2014 Master Pick Employees; and (b) have not signed the required agreements to participate in the Fund (*id.*).

Plaintiff contends that, faced with repeated demands from the Fund, the Contractors (by failing to enter into Agreements with the Fund and to remit monies owed to the Fund) and the DOE (by refusing to honor the Fund's Attachment Requests and to terminate the Contractors' Contracts) breached their obligations to the Fund embedded in the EPP (*id.* ¶ 51). Plaintiff alleges that the DOE held six Master Picks in 2015 and three Master Picks in 2016 through which Jofaz hired 61 additional drivers and escorts who were Fund participants and, on whose behalf, Jofaz owes money to the Fund (the "Additional 61 Employees") (*id.* ¶ 52). Plaintiff asserts that Jofaz failed to enter into the required agreement with the Fund to participate in the Fund and further failed to pay any of the monies owed to the Fund on behalf of any of the Additional 61 Employees (*id.* ¶ 53). Plaintiff avers that the DOE refused to: (i) require Jofaz to enter into an agreement to participate in the Fund and to pay the sums owed to the Fund for the Additional 61 Employees; (ii) honor Attachment Requests the Fund submitted for the Additional 61 Employees; and (iii) terminate Jofaz's Contract notwithstanding its breaches (*id.* ¶ 54).

DISCUSSION

The DOE's Summary Judgment Motion

In its sole cause of action against the DOE, a breach of contract claim, Plaintiff alleges that, as a third-party beneficiary of the Contracts featuring the EPP, the Fund is entitled to enforce the signatory parties' obligations thereunder and that, in addition to having the right to enforce the Contractors' obligations to the Fund in the EPP, the Fund is entitled to enforce the DOE's obligations to the Fund arising under the EPP (*id.* ¶ 70). Plaintiff posits that the Attachment Procedure Obligation is for the Fund's benefit as it purportedly obligates the DOE, upon being notified by the Fund that Contractors failed to make payments owed to the Fund, to withhold payments owed by the DOE to the Contractors, and instead to remit the monies owed by the

Contractors directly to the Fund (*id.* ¶ 71). Likewise, Plaintiff contends that the DOE's obligation to require Contractors to sign agreements with the Fund and to terminate the Contracts of any Contractors that do not adhere with their obligations to the Fund are for the Fund's benefit (*id.* ¶ 72).

Plaintiff asserts that, by refusing to honor the Fund's Attachment Requests and to make the payments owed by the Contractors pursuant to the Attachment Procedure Obligation, the DOE breached its Contracts (*id.* ¶ 73). Resting on the same logic, Plaintiff contends that by refusing to require the Contractors to sign agreements with the Fund and failing to terminate the Contractors' Contracts in the wake of the Contractors' failure to fulfill their contractual obligations to the Fund – including the Contractors' obligations to sign agreements with the Fund and to pay monies owed to the Fund under the EPP – the DOE breached its Contracts (*id.* ¶ 74).

Plaintiff avers that the DOE's breaches of its Contracts damaged the Fund by depriving it of payments due to it by the Contractors, and in turn by the DOE pursuant to the Attachment Procedure Obligation (*id.* ¶ 75). As such, Plaintiff seeks to hold the DOE jointly and severally liable for the monies owed by the Contractors as a result of the DOE's breaches of its Contracts.

The DOE moves for an order, pursuant to CPLR 3212, granting summary judgment in its favor and dismissing Plaintiff's complaint as to the DOE, predicated on the DOE's alleged breach of contract asserted in Plaintiff's second cause of action (motion sequence number 11). The DOE's summary judgment motion revolves inexorably around a principal axis, namely, the DOE's contention that, while the DOE is contractually bound to withhold a Contractor's payments and to remit them to the "applicable" union or fund after receiving written notice that the Contractor was "found to be in violation" of certain contract provisions, the "finding" the Fund relies upon does not constitute a finding as such purported finding is merely the fruit of the Fund's allegations of

violation, adopted upon its counsel's advice unmoored from any adjudicative process (*see* NYSCEF Doc No. 308, memo. of law at 7-8). The DOE reasons that the Fund is in effect requesting that the court determine that its unilateral self-interested "finding" of violation suffices to bind the DOE and each of its Contractors, a proposition espoused by neither the Contractors nor the DOE (*id.* at 8).

Specifically, relying on the "Enforcement" section of the EPP, the DOE asserts that any obligation on the DOE's part to "withhold the appropriate amounts from any payments due to the [C]ontractor and pay them directly to . . . the applicable union pension fund for the benefit of the employees affected" is expressly conditioned on the Contractor being "found to be in violation" of the Contract's EPP "regarding the payment of . . . pension contributions" (*see* NYSCEF Doc No. 3, Amended Transportation Contract ¶ [H] [5]). Based on the foregoing contractual provisions, the DOE concludes that a "finding" of EPP violation is a condition precedent to the DOE's obligation to withhold, and remit to the Fund, a Contractor's earnings (*see* NYSCEF Doc No. 308, memo. of law ¶ [A] [i]). The DOE contends that the subject condition precedent has not been triggered in that the Fund claims that its unilateral assertions of EPP violations embedded in its Attachment Requests[2] submitted to the DOE serve as "findings" for purposes of the EPP Enforcement section, which claim the DOE opines the Fund cannot substantiate under a reasonable interpretation of the Contracts (*id.* ¶ [A] [ii]).

The DOE contends that a "finding" ordinarily means an official determination by a judge, jury or administrative agency of a fact, and, as such, the Fund's self-serving contention of EPP violations featured in its Attachment Requests sent to the DOE cannot serve as "findings" in the

[2] In the Attachment Requests, the Fund requested that the DOE enforce the Attachment Procedure Obligation in light of the Contractors' alleged failure to remit monies owed to the Fund pursuant to the EPP (*see* NYSCEF Doc No. 2, complaint ¶ 45).

context of the EPP "Enforcement" section (*id.* at 17-18). On this basis, the DOE argues that the dismissal on summary judgment of the Fund's breach of contract cause of action against the DOE is warranted given the Fund's failure to satisfy the "finding" condition precedent to the DOE's contractual duty to withhold, and tender to the Fund, a Contractor's earnings (*id.* at 17-21).

Analysis of the Viability of the DOE's Summary Judgment Motion

At the core of the DOE's summary judgment motion lies the notion that, absent a formal "finding" by a neutral fact finder that a Contractor owed contributions to the Fund, the DOE was under no obligation to withhold, or tender to the Fund, monies due to the Contractor (*id.* ¶ [A] [ii]). Insofar as the DOE contends that the Fund's unilateral self-interested assertion of EPP violations set forth in its Attachment Requests submitted to the DOE cannot serve as a "finding" given the unilateral and partial nature of such assertion, the DOE concludes that the Fund's breach of contract claim against the DOE must be dismissed on summary judgment (*id.*).

The DOE's summary judgment motion, contingent on the above line of reasoning, must be denied as the premise underlying this syllogism (namely, that the EPP requires a formal "finding" by a neutral third-party that a Contractor failed to pay contributions to the Fund as a prerequisite to initiating the DOE's duty to withhold, and remit to the Fund, payments owed to the Contractor) is unavailing. Indeed, an analysis of the text of the EPP set forth below reveals that, contrary to the premise at the heart of the DOE's line of reasoning, the term "found" as employed in the EPP is ambiguous in that the EPP does not expressly require that a formal finding by a neutral third-party arise as to a Contractor's failure to remit contributions to the Fund as a condition precedent to the DOE's duty to withhold, and tender to the Fund, a Contractor's earnings:

> In addition to any other remedies provided in the contract between [the DOE] and the contractor . . . *if the contractor is found to be in violation* of the foregoing Employee Protection Provisions regarding the payment of . . . pension contributions, or other aspects

> of compensation or benefits, then the Director of the [DOE's] Office of Pupil Transportation . . . shall withhold the appropriate amounts from any payments due to the contractor and pay them directly to the applicable union for the benefit of the employees affected, to the Division 1181 A.T.U. – New York Employees Pension Fund or other applicable pension fund.

(NYSCEF Doc No. 3, Amended Transportation Contract ¶ [H] [5] [emphasis added]).

The DOE's motion for summary judgment is largely a reprise of its March 14, 2022 motion to dismiss Plaintiff's breach of contract claim under CPLR 3211 (a) (7), in which DOE argued, as here, that Plaintiff's breach of contract claim should be dismissed based on the confluence of the following two propositions: (i) short of a formal "finding" by a neutral fact-finder that a Contractor owed contributions to the Fund, the DOE was not required to withhold, or remit to the Fund, monies due to the Contractor; and (ii) since the Fund's assertion of EPP violations set forth in its Attachment Requests submitted to the DOE cannot serve as "findings" due to the unilateral and self-interested character of such assertion, the DOE concluded that the Fund's breach of contract claim against the DOE must be dismissed (*see* NYSCEF Doc No. 9, memo. of law at 6, 9).[3] This court rejected as follows in a Decision and Order dated November 17, 2022 the DOE's arguments in support of its motion to dismiss, which arguments the DOE has now recalibrated in its present motion by adopting summary judgment nomenclature:

> Turning . . . to DOE's contention that plaintiff fails to state a claim for breach of contract against it because a condition precedent in the EPPs was not satisfied, DOE fails to establish same as a matter of law. The EPPs do not explicitly state that a formal finding by a neutral third party is a prerequisite to the enforcement procedure.

[3] Using phraseology echoing that featured in its present motion for summary judgment, the DOE argued as follows in support of its March 14, 2022 motion to dismiss Plaintiff's breach of contract cause of action: "Plaintiff fails to state a claim of breach of contract against the DOE . . . based on . . . the DOE's alleged obligation to attach funds . . . because a condition precedent . . . never arose. Specifically, the DOE Contracts provide that the DOE shall attach payments due to a contractor and pay them to a pension fund only when it has been 'found' that such payments were owed to the fund. Absent such a finding . . . the DOE was not obligated to attach any monies" (*see* NYSCEF Doc No. 9, memo. of law at 6). The DOE further contended in its motion to dismiss, as here, that "[t]he Attachment Procedure does not state that the DOE must automatically withhold monies owed to any contractor based simply on a unilateral demand for attachment submitted by a union, pension fund or other benefit fund" (*id.* at 9).

(NYSCEF Doc No. 94, Decision and Order, at 10, Boddie, J.).

Further weighing against the grant of summary judgment sought by the DOE, its memorandum of law in support of its summary judgment motion is characterized by a dearth of in-depth analysis directly challenging the court's above-quoted November 17, 2022 determination as to the fulcrum of the DOE's present motion for summary judgment (to wit, the "finding" issue), which determination applies with equal force in the context of the present summary judgment motion practice.

Also militating against granting the DOE's summary judgment motion, the core conditional clause set forth in the EPP (namely, "*if the contractor is found to be in violation* of the foregoing Employee Protection Provisions regarding the payment of wages, welfare benefit contributions, pension contributions . . . then the [DOE] . . . shall withhold the appropriate amounts from any payments due to the contractor and pay them directly to the applicable union . . . to the . . . [Fund] or other applicable union pension fund") (NYSCEF Doc No. 3, Amended Transportation Contract ¶ [H] [5] [emphasis added]) is inherently ambiguous as to the type of "finding" required to trigger the DOE's duty to withhold payments due to a Contractor, and to remit said monies to a fund. Indeed, the contours of the amorphous term "finding" are nowhere defined in the EPP, which EPP is silent as to, among other parameters, whether a formal finding by a neutral third party is a prerequisite to the enforcement procedure (*id.*).

The intrinsically ambiguous character of the pivotal term "found" in the phrase "if the contractor is found to be in violation" is anathema to the drastic summary judgment relief sought by the DOE, since, as the Appellate Division, Second Department has held "[w]here, as here, the language of a contract is ambiguous, its construction presents a question of fact which may not be resolved by the court on a motion for summary judgment . . . [as] an issue of fact exists to be

resolved at trial" (*see Pepco Constr. of N.Y., Inc. v CNA Ins. Co.*, 15 A.D.3d 464, 465 [2d Dept. 2005]; *Jackson Hgts. Med. Group v Complex Corp.*, 222 AD2d 409, 411 [2d Dept 1995] [given the ambiguous nature of the parties' contract, an issue of fact exists warranting the denial of summary judgment]; *Icon Motors v Empire State Datsun*, 178 AD2d 463, 464 [2d Dept 1991]).[4]

Further warranting the denial of the summary judgment relief sought by the DOE, the DOE has not cited to any New York State precedent involving, as here, the construction of the terms "found" or "finding" in a breach of contract context involving pension fund contributions buttressing its argument that a "finding" ordinarily means a "determination by a judge, jury, or administrative agency," thereby undermining the DOE's postulate that the Fund's assertion of EPP violations featured in its Attachment Requests to the DOE cannot serve as a "finding" (*see* NYSCEF Doc No. 308, memo. of law ¶ [A] [ii]; *Alvarez v Prospect Hosp.*, 68 NY2d 320, 324 [1986] ["the proponent of a summary judgment motion must make a prima facie showing of entitlement to judgment as a matter of law, tendering sufficient evidence to demonstrate the absence of any material issues of fact . . . Failure to make such prima facie showing requires a denial of the motion, regardless of the sufficiency of the opposing papers"]; *Winegrad v New York Univ. Med. Ctr.*, 64 NY2d 851, 853 [1985]; *Moonilal v Roman Catholic Church of St. Mary Gate of Heaven*, 225 AD3d 592, 593 [2d Dept 2024]).

Based on the above, the DOE's motion for summary judgment seeking to dismiss Plaintiff's complaint as to the DOE, predicated on the DOE's alleged breach of contract asserted in Plaintiff's second cause of action, is denied (motion sequence number 11).

[4] Further emphasizing the ambiguity of the EPP, the DOE concedes that "[t]he Contracts do not expressly define 'finding'" (*see* NYSCEF Doc No. 308, memo. of law ¶ [I] [A] [ii]).

The Defendant Contractors' Summary Judgment Motions to Dismiss the Complaint

In its only cause of action against the Defendant Contractors (to wit, Jofaz, Allied, Pride and Quality), Plaintiff alleges that, as a third-party beneficiary of the Contracts featuring the EPP, the Fund is entitled to enforce the signatory parties' obligations thereunder (*see* NYSCEF Doc No. 2, complaint ¶ 59). Plaintiff asserts that the requisite elements to establish the Fund as a third-party beneficiary of the EPP in the Contracts are satisfied (*id.* ¶ 60). Plaintiff claims that the first element required for it to qualify as a third-party beneficiary is satisfied in that the Contracts constitute valid and binding contracts between the DOE and the Defendant Contractors (*id.*).

Plaintiff posits that it satisfies the second element necessary to qualify as a third-party beneficiary since the relevant provisions of the EPP are intended to benefit the Fund (*id.* ¶ 61). In particular, Plaintiff contends that paragraph 4 of the EPP expressly names the Fund and gives rise to binding obligations on the part of the Contractors and the DOE to the Fund benefiting the Fund (*id.*). Specifically, Plaintiff avers that paragraph 4 of the EPP expressly names the Fund in obligating the Contractors to "sign an agreement with Division 1181 A.T.U. – New York Employees Pension Fund . . . to participate in such plan on behalf of all operators (drivers), mechanics, dispatchers and escorts" (*see* NYSCEF Doc No. 3, Amended Transportation Contract ¶ [H] [4]). Likewise, Plaintiff underlines that paragraph 4 of the EPP expressly identifies the Fund and requires the Contractors to pay monies to the Fund (*see* NYSCEF Doc No. 2, complaint ¶ 61).

Plaintiff alleges that the final element required to establish the Fund as a third-party beneficiary of the EPP is satisfied since the benefit to the Fund under the Contracts is immediate, rather than incidental, and reflects the assumption by the Contractors and the DOE of a duty to compensate the Fund were the benefit to be lost (*id.* ¶ 62). Plaintiff highlights that the Contractors' obligation to pay the Fund is a material term of the agreement between the DOE and the

Contractors, including that the DOE is required to withhold payments to the Contractors and to terminate their Contracts in the event the Contractors fail to adhere with their payment obligations to the Fund (*see* NYSCEF Doc No. 3, Amended Transportation Contract ¶ [H] [5]).

In the complaint, Plaintiff alleges that, under the EPP, the onus is on the Contractors to sign agreements with the Fund and to make payments to the Fund at the rates specified in the EPP for each employee the Contractor hires from the Lists who participated in the Fund (*see* NYSCEF Doc No. 2, complaint ¶ 63). Plaintiff asserts that the Contractors employed, and continue to employ, employees on whose behalf payments are owed to the Fund, including the 2014 Master Pick Employees and, in the case of Jofaz, the Additional 61 Employees (*id.* ¶ 64). Plaintiff contends that by failing to sign agreements with the Fund, as well as to remit payments to the Fund, the Contractors breached their respective Contracts (*id.* ¶ 65). Plaintiff avers that the Contractors' breaches of their Contracts damaged the Fund by depriving it of payments due to it by the Contractors, rendering the Contractors liable to the Fund for the resultant losses (*id.* ¶¶ 66-67). Based on the foregoing, Plaintiff seeks to hold the Contractors liable for the payments owed by the Contractors to the Fund pursuant to the EPP and to enjoin the Contractors from entering into agreements with the Fund effective retroactively to the dates each Contractor first hired Fund participants from the Lists (*id.* ¶¶ [1] [a], [3]).

The Defendant Contractors move for an order, pursuant to CPLR 3212, granting summary judgment in their favor and dismissing Plaintiff's cause of action interposed against them in the complaint, that is, Plaintiff's first cause of action for breach of contract (motions sequence numbers 9 and 10).[5] The Defendant Contractors' summary judgment motions are predicated on the proposition that Plaintiff cannot be deemed to be a third-party beneficiary under the Contracts

[5] Specifically, Quality and Pride interposed summary judgment motion sequence number 9 and Jofaz and Allied interposed summary judgment motion sequence number 10.

since the EPP does not recognize the Fund as the sole potential beneficiary of contributions for employees' benefits, but, rather, contemplates that contributions be made to other unions. As Jofaz and Allied reason in concluding that Plaintiff does not qualify as a third-party beneficiary under the Contracts, "[s]ince the EPP clearly does authorize contributions to pension funds other than Plaintiff, then the Fund is not the only beneficiary" and, hence, "1181's third-party beneficiary claim fails as a matter of law and the Complaint must be dismissed" (*see* NYSCEF Doc No. 262, memo. of law ¶ [II] [A]).

Jofaz and Allied correctly indicate that the EPP permits Contractors to make contributions to pension funds other than Plaintiff, as reflected in the "Enforcement" section of the EPP, which provides that:

> [I]f the contractor is found to be in violation of the . . . Employee Protection Provisions regarding the payment of . . . pension contributions . . . the Director of the Office of Pupil Transportation . . . shall withhold the appropriate amounts from any payments due to the contractor and pay them directly to the applicable union . . . to the [Fund] or other applicable union pension fund.

(NYSCEF Doc No. 3, Amended Transportation Contract ¶ [H] [5]). Albeit correct on this front, Jofaz and Allied's contention that Plaintiff does not qualify as a third-party beneficiary under the Contracts as the EPP does not treat the Fund as the exclusive potential recipient of contributions for employees' benefits, is ill-founded. Indeed, Jofaz and Allied fail to make a prima facie showing of entitlement to summary judgment through admissible evidence eliminating all material factual issues in support of their position that Plaintiff does not qualify as a third-party beneficiary under the EPP, warranting the denial of their motion (*see Bill Birds, Inc. v Stein Law Firm, P.C.*, 35 NY3d 173, 179 [2020]; *Friends of Thayer Lake LLC v Brown*, 27 NY3d 1039, 1043 [2016]). To the contrary, Plaintiff has duly alleged in its first breach of contract cause of action delineated

above that it is a third-party beneficiary under the EPP, which cause of action meets the following three requirements to the applicability of the third-party beneficiary doctrine:

> A party asserting rights as a third-party beneficiary must allege: (1) the existence of a valid and binding contract between other parties, (2) that the contract was intended for its benefit, and (3) that the benefit to it was sufficiently immediate, rather than incidental, to indicate the assumption by the contracting parties of a duty to compensate it if the benefit is lost.

(*Board of Mgrs. of 100 Congress Condominium v SDS Congress, LLC*, 152 AD3d 478, 480 [2d Dept 2017]; *Board of Educ. of Northport-E Northport Union Free Sch. Dist. v Long Is. Power Auth.*, 130 AD3d 953, 954-955 [2d Dept 2015]; *Nanomedicon, LLC v Research Found. of State Univ. of N.Y.*, 112 AD3d 594, 596 [2d Dept 2013]).

Having failed to undermine the viability of Plaintiff's third-party beneficiary status through applicable precedent or admissible evidence, the instant branch of Jofaz and Allied's summary judgment motion must be denied. As this court held in its Decision and Order dated November 17, 2022, in the context of the Defendant Contractors' motions to dismiss the complaint, in which the Defendant Contractors posited, as here, that Plaintiff's breach of contract claim should be dismissed since Plaintiff does not pass muster as a third-party beneficiary as it is not the sole potential beneficiary under the EPP:

> The Contractors' contention that the Fund cannot be a third-party beneficiary because it is not the only potential beneficiary under the EPP is without legal support. The Contractors fail to explain how the Fund cannot . . . be an intended third-party beneficiary when the EPP explicitly requires contractors to render performance directly to the Fund under specified circumstances. As such, dismissal on this basis is denied.

(NYSCEF Doc No. 94, Decision and Order, at 11, Boddie, J.).

The Defendant Contractors' Argument that Labor Law § 193 Prohibits the Relief Sought by Plaintiff

In further support of their summary judgment motions seeking the dismissal of the complaint, the Defendant Contractors contend that the relief sought in Plaintiff's breach of contract claim is prohibited pursuant to Labor Law § 193, which state statute governs employers' deductions from employees' wages (*see* NYSCEF Doc No. 262, memo. of law ¶ [I] [A]; *see also* NYSCEF Doc No. 202, memo. of law ¶ [II] [B]). The Defendant Contractors argue that, under Labor Law § 193, they are statutorily prohibited from deducting monies from their employees' paychecks without: (i) their employees' authorization permitting the deduction; or (ii) a collective bargaining agreement between the Defendant Contractors and Local 1181, the union affiliated with the Fund, authorizing the deduction (*id.*). The Defendant Contractors opine that since no evidence has been adduced that either of the aforesaid conditions precedent to permitting deductions by the Defendant Contractors from their employees' wages exist (that is, either the employees' authorization for the deductions or a collective bargaining agreement allowing the deductions), summary judgment is warranted (*id.*).

The Defendant Contractors assert that as the only two conditions precedent permitting them to deduct monies from their employees' wages under Labor Law § 193 are not present, they are barred from deducting monies from their employees' paychecks for the purpose of remitting such monies to the Fund, vitiating Plaintiff's breach of contract claim against them (*id.*). Indeed, a party cannot be held liable on a breach of contract theory by virtue of having not engaged in conduct that violates a statute (*see Matter of New York State Med. Transporters Assn. v Perales*, 77 NY2d 126, 131 [1990] ["[i]llegal contracts are not generally enforceable"]; *Village Taxi Corp. v Beltre*, 91 AD3d 92, 99 [2d Dept 2011]; *Jara v Strong Steel Door, Inc.*, 58 AD3d 600, 602 [2d Dept 2009]).

An analysis of the statute that forms the nucleus of the Defendant Contractors' argument is necessary to gauge the viability of this argument. Labor Law § 193 (1) (b) provides, in pertinent part, as follows:

> 1. No employer shall make any deduction from the wages of an employee, except deductions which . . . b. are expressly authorized in writing by the employee and are for the benefit of the employee, provided that such authorization is voluntary and only given following receipt by the employee of written notice of all terms and conditions of the payment and/or its benefits and the details of the manner in which deductions will be made.
>
> * * *
>
> Notwithstanding the foregoing, employee authorization for deductions . . . may also be provided to the employer pursuant to the terms of a collective bargaining agreement. Such authorized deductions shall be limited to payments for . . . pension or health and welfare benefits.

(Labor Law § 193 [1] [b]).

In short, Labor Law § 193 (1) (b) is narrowly circumscribed as it merely bars employers from making deductions from their employees' wages in certain circumstances (that is, when (i) the employees have not expressly authorized the deductions and (ii) employee authorization for the deductions has not been secured via a collective bargaining agreement). As a corollary, Labor Law § 193 (1) (b) remains silent as to, and hence does not bar, Plaintiff from asserting a viable breach of contract cause of action against the Defendant Contractors arising from: (i) the Defendant Contractors' alleged failure to pay the Fund from the Defendant Contractors' assets;[6] and (ii) the

[6] Plaintiff's breach of contract cause of action against the Contractors is based on Plaintiff's allegations in the complaint that: (1) "[t]he Contractors' obligation to pay the Fund is a material term of the agreement between DOE and the Contractors" (*see* NYSCEF Doc No. 2, complaint ¶ 62); and (2) "[b]y failing to . . . remit payments to the Fund, the Contractors breached their respective Contracts" (*id.* ¶ 65).

Defendant Contractors' purported breach of contract associated with their failure to sign an agreement to participate in the Fund.[7]

In sum, since the Defendant Contractors' Labor Law § 193-related argument in favor of summary judgment as to Plaintiff's breach of contract cause of action merely pertains to the employee wage deduction issue, such argument does not warrant granting the Defendant Contractors' summary judgment motions as to Plaintiff's breach of contract claim as the line of argument in question is not germane to Plaintiff's allegation in the complaint that the Defendant Contractors breached their Contracts by: (i) breaching their agreement to pay the Fund from the Defendant Contractors' assets; and (ii) breaching their contract to sign an agreement to participate in the Fund. In light of the Defendant Contractors' failure to make a prima facie showing of entitlement to summary judgment as to Plaintiff's breach of contract cause of action on Labor Law § 193 grounds, that branch of the Defendant Contractors' summary judgment motions must be denied regardless of the sufficiency of the opposing papers (*see Moonilal v Roman Catholic Church of St. Mary Gate of Heaven*, 225 AD3d 592, 593 [2d Dept 2024]; *Monitor Holding Corp. v I.B. Distrib. Corp.*, 189 AD3d 1577, 1578 [2d Dept 2020]; *Sipourene v County of Nassau*, 266 AD2d 450, 451 [2d Dept 1999]).

The Defendant Contractors' motions for summary judgment to dismiss Plaintiff's breach of contract cause of action based on Labor Law § 193 all but mirror their previous motions to dismiss Plaintiff's complaint, which Labor Law § 193-related arguments this court rejected as follows by Decision and Order dated November 17, 2022: "[T]he Contractors fail to establish as a matter of law that the EPPs that plaintiff is seeking to enforce violate . . . New York's Labor Law

[7] In the complaint, Plaintiff alleges in its breach of contract cause of action against the Contractors that "[b]y failing to sign agreements with the Fund . . . the Contractors breached their respective Contracts" (*see* NYSCEF Doc No. 2, complaint ¶ 65).

and that enforcement of such provisions is therefore precluded" (*see* NYSCEF Doc No. 94, Decision and Order, at 12, Boddie, J.).[8]

Based on the foregoing, the motions interposed by the Defendant Contractors (namely, motion sequence number 9 interposed by Quality and Pride and motion sequence number 10 interposed by Jofaz and Allied), for an order granting summary judgment in their favor and dismissing Plaintiff's cause of action interposed against them in the complaint, to wit, Plaintiff's first cause of action for breach of contract, are denied.

Plaintiff's Motion for Partial Summary Judgment

Plaintiff moves for a partial summary judgment order, pursuant to CPLR 3212, ruling that the Defendant Contractors (that is, Jofaz, Allied, Quality and Pride) have unambiguous contractual obligations relating to the Fund arising from the EPP in their respective Contracts with the DOE, for any employees the Defendant Contractors hired from the "Master Seniority Lists" referenced in the EPP, provided that such employees previously participated in the Fund and did not exercise any option to withdraw from the Fund (motion sequence number 8). In its motion, Plaintiff highlights that the EPP provides that the Defendant Contractors shall "do various things," including that they shall: (i) sign agreements with the Fund to participate in the Fund on behalf of their Fund Participant Employees; (ii) pay specified amounts to the Fund on behalf of their Fund Participant Employees; and (iii) withhold a portion of the Fund Participant Employees' wages and pay such monies to the Fund (*see* NYSCEF Doc No. 192, memo. of law ¶ I).

In its motion, Plaintiff avers that it "simply seeks a ruling . . . on part of their [sic] cause of action against the Defendants for breach of contract, namely, that the EPP impose[s] specific,

[8] The ERISA preemption arguments raised by Jofaz and Allied in conjunction with their motion for summary judgment (*see* NYSCEF Doc No. 262, memo. of law ¶ III) shall not be addressed in light of said defendants' withdrawal of this line of argument via letter to the court dated July 15, 2025 (*see* NYSCEF Doc No. 324).

unambiguous contractual obligations on the Defendant Contractors to do what the EPP say[s] they 'shall' do" (*id.*). Plaintiff asserts that it "does not seek full summary judgment through this Motion" (*id.*), conceding that "[t]here are a number of factual issues to be resolved at trial, including subjects such as intent (e.g., is the Fund an intended third-party beneficiary?) and damages (e.g., the specific individual Fund Participant Employees employed by the Defendant Contractors)" (*id.*). Plaintiff admits in its summary judgment motion that "there is very little appropriate for resolution on summary judgment" (*id.*).

The Lack of Standing Obstacle to Summary Judgment

Each of the Defendants asserted a lack of standing affirmative defense in their respective answers. Jofaz and Allied alleged in their answer dated January 9, 2023 that "Plaintiff lacks standing to assert any claims against Defendants" (*see* NYSCEF Doc No. 111, answer ¶ 97). Pride and Quality asserted in their March 4, 2024 second amended answer that "[t]he Complaint's claims are barred because Plaintiff lacks standing to assert them" (*see* NYSCEF Doc No. 152, second amended answer ¶ 4). The DOE alleged in its answer dated January 9, 2023 that "Plaintiff lacks standing to assert the instant claim against the DOE" (*see* NYSCEF Doc No. 110, answer ¶ 85).

Plaintiff sidesteps the lack of standing issue in its motion for partial summary judgment (*see* NYSCEF Doc No. 192, memo. of law ¶¶ [I], [II], [III], [IV], [V]). Given Plaintiff's failure to wrestle with Defendants' lack of standing affirmative defenses in its motion for partial summary judgment, such motion must be denied. As the Appellate Division, Second Department articulated this concept:

> CPLR 3212 (b) requires the proponent of a motion for summary judgment to demonstrate the absence of genuine issues of material fact on every relevant issue raised by the pleadings, including any affirmative defenses (*Stone v Continental Ins. Co.*, 234 AD2d 282, 284 [1996] . . . *see also Sokolow, Dunaud, Mercadier & Carreras v Lacher*, 299 AD2d 64, 70 [2002]).

> Accordingly, where, as here, a court deems the defendant's answer amended to include the affirmative defense of lack of standing in opposition to a plaintiff's motion for summary judgment, a plaintiff must establish its standing in order to be entitled to summary judgment on the complaint.

(*GMAC Mtge., LLC v Coombs*, 191 AD3d 37, 50 [2d Dept 2020] [internal quotations marks omitted]; *Fossella v Adams*, 225 AD3d 98, 109 [2d Dept 2024] [internal quotation marks omitted] ["[w]here, as here, the plaintiff's standing has been placed in issue by a defendant's answer, the plaintiff must prove its standing as part of its prima facie showing on a motion for summary judgment on the complaint"]; *Wells Fargo Bank, N.A. v Carrington*, 221 AD3d 746, 748 [2d Dept 2023]).

In sum, in light of Plaintiff's failure in its motion for partial summary judgment to make a threshold showing that it has standing to pursue the relief sought in the instant proceeding, notwithstanding Defendants' lack of standing affirmative defenses in their answers, Plaintiff's motion must be denied (motion sequence number 8).

Plaintiff's Failure to Identify the Cause of Action, or Parts Thereof, on Which its Partial Summary Judgment Motion Is Predicated

A second independent basis exists warranting the denial of Plaintiff's motion for partial summary judgment (motion sequence number 8). Pursuant to CPLR 3212(e), "summary judgment may be granted as to one or more causes of action, or parts thereof, in favor of any one or more parties" (*see Epic W14 LLC v Malter*, 211 AD3d 574, 575 [1st Dept 2022]; *Fourteen Sharot Place Realty Corp. v Miceli*, 125 AD2d 634, 637 [2d Dept 1986]). An analysis of Plaintiff's moving papers establishes that Plaintiff has failed to identify the cause of action, or parts thereof, on which its partial summary judgment motion is predicated, warranting the denial of such motion (*see* NYSCEF Doc No. 192, memo. of law ¶¶ [I], [II], [III], [IV], [V]). To the contrary, Plaintiff largely

steers clear of the substance of the following core matters in its motion, leaving the reader at a loss to ascertain which cause of action, or parts thereof, buttresses the relief sought in the motion: (i) is Plaintiff's motion for partial summary judgment predicated on its first cause of action for breach of contract?; (ii) is Plaintiff's motion based on its second cause of action for breach of contract?; (iii) if Plaintiff's motion rests on its first cause of action, which specific allegations in the first cause of action are at the root of Plaintiff's motion?; (iv) likewise, if Plaintiff's motion is premised on its second cause of action, which specific allegations in said cause of action are at the heart of Plaintiff's motion?

Plaintiff's failure to elucidate the fissures entrenched in the fabric of its motion warrants its denial (*see Pine Val. Ctr., LLC v Jacobs*, 237 AD3d 1115, 1117 [2d Dept 2025] ["[a] party seeking summary judgment bears the initial burden of demonstrating its prima facie entitlement to the requested relief . . . Only if that burden is met does the burden then shift to the party opposing summary judgment to tender evidence . . . sufficient to raise a triable issue of fact"]; *Miller v Kliger*, 15 AD3d 457, 458 [2d Dept 2005]; *Knox v Fostini*, 305 AD2d 467, 468 [2d Dept 2003]).

CONCLUSION

Based on the foregoing, the parties' motions seeking summary judgment (MS 8 – 11) are all denied. Any arguments not expressly addressed herein were considered and deemed to be without merit.

E N T E R:

Honorable Reginald A. Boddie
Justice, Supreme Court

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