

**JF Capital Advisors, LLC v Merchants Hospitality  
LLC**

2026 NY Slip Op 30427(U)

January 29, 2026

Supreme Court, New York County

Docket Number: Index No. 651394/2020

Judge: Arlene P. Bluth

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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. ARLENE P. BLUTH PART 14**

*Justice*

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JF CAPITAL ADVISORS, LLC,  
  
Plaintiff,

**INDEX NO.** 651394/2020

**MOTION DATE** 01/16/2026

**MOTION SEQ. NO.** 006

- v -

MERCHANTS HOSPITALITY LLC, 1101-43 AVE  
ACQUISITION LLC,

**DECISION + ORDER ON  
MOTION**

Defendant.

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The following e-filed documents, listed by NYSCEF document number (Motion 006) 196, 197, 198, 199, 200, 201, 202, 203, 204, 205, 206, 207, 208, 209, 210, 211, 212, 213, 214, 215, 216, 217, 218, 219, 220, 221, 222, 223, 224, 225, 226, 227, 228, 229, 230, 231, 232, 233, 234, 235, 236

were read on this motion to/for JUDGMENT - SUMMARY.

Plaintiff’s motion for summary judgment against the remaining defendants Merchants Hospitality LLC (“Merchants”) and 1101-43 Ave Acquisition, LLC (“1101”) is granted in part and denied in part.

**Background**

Plaintiff alleges that it entered into a contract with defendants to provide advisory services in three phases in connection with a hotel in New York City. It contends that in Phase 1, the retainer was \$20,000 while Phase 2 included a success fee of \$75,000 for “executing a new definitive document with an operator for the hotel.” Plaintiff alleges that Phase 3 included a fee of one percent for month of the total hotel revenue. It acknowledges that the contract had a termination clause in which defendants could terminate plaintiff at any time upon written notice.

Plaintiff contends that it substantially performed under the contract in all three phases, including that defendants took plaintiff’s recommendation regarding a hotel operator and signed

that entity to a five-year term in June 2019. Plaintiff says it conducted detailed analysis regarding performance, facilitated negotiations for the operated and secured term sheets. It claims it performed this work from May to October 2019 and that it also provided services regarding the overall valuation of the hotel. Plaintiff insists it coordinated the replacement of the existing commercial tenant with a new entity.

Plaintiff maintains that defendants paid the initial \$20,000 but did not pay any part of the additional amount owed for Phase 2 and did not pay anything for phase 3. It contends that the total due is \$100,714.91, which is made up of the \$75,000 success fee for Phase 2 plus the one percent fees for the applicable months in Phase 3. Plaintiff argues that it sent invoices to defendants but they never paid nor did they ever dispute or object to these amounts. It adds that defendants never exercised their rights to terminate the contract and just simply refused to pay.

In opposition, defendants contend that the only party with whom plaintiff contracted with was defendant 1101 and that defendant Merchants was never a party to the subject contract. In his affirmation in opposition, Richard Cohn (the general counsel for both defendants), argues that plaintiff failed to fulfill its obligations under the terms of the contract. He explains that during the relevant time period, 1101 discovered that the former operator was engaging in questionable business practices. When confronted, this former operator apparently abandoned the hotel right before July 4, 2019 and so 1101 was forced to find a temporary hotel manager and so there is no reason to pay the \$75,000 fee for a temporary manager.

Defendants contend that plaintiff did not analyze the financial records of the hotel as required and stress that plaintiff did not show that its employees did any work on the job and points out that there were no documents, such as time records, submitted to show what plaintiff

did. They insist that there is therefore a genuine issue of fact regarding whether plaintiff actually performed under the terms of the contract.

In reply, plaintiff emphasizes that defendant did not contest plaintiff's cause of action for account stated and so the Court should grant that branch of its motion. It emphasizes that all of its communications were with Merchants and so defendants' claim that the contract was only with 1101 is misplaced.

### **Discussion**

“On a motion for summary judgment, the moving party has the burden to establish “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. If the moving party fails to meet this initial burden, summary judgment must be denied “regardless of the sufficiency of the opposing papers” (*Solis v City of New York*, 2025 NY Slip Op 06673 [1st Dept 2025] [internal quotations and citations omitted]).

#### *Contracting Party*<sup>1</sup>

The Court denies the motion as against Merchants Hospitality LLC as there is a clear question of fact regarding whether this entity contracted with plaintiff. The Court observes that the original engagement letter contained a signature line for Merchants (NYSCEF Doc. No. 228) and Mr. Cohn's opposition contends he told plaintiff that the agreement had to be with 1101 (NYSCEF Doc. No. 223, ¶ 11). Subsequently, the agreement upon which this action was modified and is only between plaintiff and 1101 (NYSCEF Doc. No. 199). This Court cannot

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<sup>1</sup> The Court points out that the remaining defendants each filed separate answers (NYSCEF Doc. Nos. 205 and 207) And, curiously, only Merchants filed a counterclaim seeking the return of the \$20,000 phase 1 payment. Of course, if Merchants was not a party to the contract, then it would not be entitled to recover the \$20,000. And, for some reason, 1101 did not file the same counterclaim.

conclude, as a matter of law, that Merchants is therefore liable under a contract it did not sign. A fact finder is required to assess the extent to which this defendant might be held liable.

*Account Stated*

“An account stated has long been defined as an account balanced and rendered, with an assent to the balance express or implied; so that the demand is essentially the same as if a promissory note had been given for the balance. It is an agreement, independent of the underlying agreement, regarding the amount due on past transactions” (*Aronson Mayefsky & Sloan, LLP v Praeger*, 228 AD3d 182, 184-85, 212 NYS3d 52 [1st Dept 2024] [internal quotations and citations omitted]). Summary judgment on this cause of action is appropriate where a defendant receives and retains invoices without raising an objection within a reasonable time after receipt (*Manhattan Telecom. Corp. v Best Payphones, Inc.*, 299 AD2d 178, 178, 749 NYS2d 246 [1st Dept 2002]).

Here, plaintiff attaches the invoices it sent (NYSCEF Doc. No. 200-203) and there is no indication in defendants’ opposition that 1101 ever objected to them at all. Moreover, as plaintiff insisted in its moving papers, there is also no indication that defendants ever attempted to terminate the contract such that 1101 could then ignore some or all of these invoices. In fact, defendants’ opposition does not address the account stated cause of action at all and so the Court is compelled to grant this part of plaintiff’s motion. As discussed in the *Praeger* case cited above, an account stated claim is an independent cause of action from a breach of contract claim (*Praeger*, 228 AD3d at 184). Therefore, defendants’ assertions concerning the various deliverables that plaintiff allegedly did not distribute are irrelevant to an account stated claim.

*Breach of Contract*

The Court denies this branch of the motion with respect to both defendants. Even if the Court were to consider that Merchants is a party to the contract, defendants cited numerous issues of fact concerning the extent to which plaintiff satisfied its obligations under the contract. For instance, defendants pointed out that the contract required plaintiff to “[p]rovide recommendations with financial analysis on the structure, approach and likely outcomes of attracting and implementing independent management companies and/or soft brand” (NYSCEF Doc. No. 199 at 8 of 14). And plaintiff’s witness could not recall if plaintiff actually performed this task (NYSCEF Doc. No. 231 at 264). Nor could he recall if plaintiff satisfied other obligations (*id.* at 263-64).

*Legal Fees Claim*

The Court is unable to grant legal fees as plaintiff did not meet its prima facie burden for this cause of action. The clause that plaintiff cites in the contract for these fees is labeled “indemnification” and does not make any mention of awarding legal fees. Rather, as plaintiff points out, plaintiff is to be “[held] harmless” by defendants “from and against any and all Losses arising out of, resulting from, occasioned by or in any way attributable to errors, omissions and negligent acts caused in whole or in part by Owner its agents, employees, or invitees or anyone directly or indirectly employed by any of them or anyone for whose acts any of them maybe liable” (NYSCEF Doc. No. 199 at 5 of 14). Although the word “Losses” is capitalized, it is not defined.

Simply put, the Court cannot award legal fees based on this clause which, in of itself, seems to have little do with the award of legal fees should plaintiff commence and successfully

prosecute a case arising out of the agreement. Rather, the provision appears to apply to losses suffered by plaintiff in connection with negligent acts by defendants.

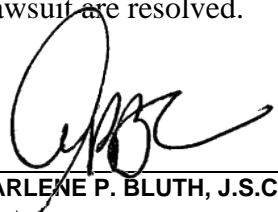
**Summary**

The Court grants plaintiff summary judgment against 1101 as to the account stated cause of action in the amount of \$100,714.91 plus statutory interest from November 4, 2019. However, the Court denies the rest of the motion. Plaintiff is entitled to enter judgment only after the resolution of the remaining claims.

Accordingly, it is hereby

ORDERED that plaintiff's motion is granted only to the extent that it is entitled to summary judgment on its account stated cause of action against 1101-43 Ave Acquisition, LLC in the amount of \$100,714.91 plus statutory interest from November 4, 2019 and plaintiff is entitled to enter judgment only after the remaining claims in this lawsuit are resolved.

1/29/2026  
DATE

  
ARLENE P. BLUTH, J.S.C.

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