

<b>Prime Care Acquisition, LLC v Aaronson</b>
2026 NY Slip Op 30494(U)
February 5, 2026
Supreme Court, Kings County
Docket Number: Index No. 516654/2025
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 5<sup>th</sup> day of February 2026.

**P R E S E N T:**

Honorable Reginald A. Boddie  
Justice, Supreme Court

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PRIME CARE ACQUISITION, LLC and  
HCS-GIRLING HOLDCO, LLC,

Index No. 516654/2025

Plaintiffs,

Cal. No. 17 MS 2

-against-

AARON AARONSON, AARON & SONS LLC,  
JOHN DOE ENTITIES 1-10 and  
2066 FLATBUSH REALTY LLC,

**Decision and Order**

Defendants.

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The following e-filed papers read herein:  
MS 2

NYSCEF Doc Nos.  
33-35, 38-41, 43-44

Plaintiffs’ motion to dismiss defendants’ counterclaim is decided as follows:

**Background**

This action arises out of plaintiffs’ purchase of Prime Care Drug & Surgicals Corp. (the “Company”), a Brooklyn pharmacy business, from defendant Aaron Aaronson (“Aaronson”), who allegedly misrepresented the Company’s financial condition, diverted millions of dollars in revenue to competing entities, and fraudulently induced plaintiffs into entering both a \$2.5 million Stock Purchase Agreement (the “SPA”) and a related lease for the pharmacy premises. By

Decision and Order dated September 29, 2025, the Court granted defendants' motion to dismiss all claims except plaintiffs' causes of action for fraudulent inducement and breach of contract.

On October 29, 2025, defendants filed a verified answer asserting two counterclaims for unjust enrichment and conversion. On November 10, 2025, plaintiffs moved to dismiss both counterclaims. Rather than opposing that motion, defendants filed an amended verified answer on December 24, 2025, asserting a single counterclaim for breach of contract. Defendants allege that plaintiffs breached the SPA by failing to remit an Employee Retention Tax Credit ("ERC") refund in the amount of \$86,613.16, which defendants contend relates to pre-closing tax periods and is therefore contractually owed to defendant Aaronson.

Plaintiffs now move to dismiss defendants' counterclaim for breach of contract pursuant to CPLR 3211(a)(7) and CPLR 3211(a)(1), and for costs and attorneys' fees under 22 NYCRR 130-1.1. Plaintiffs argue that the counterclaim fails as a matter of law because the SPA contains no provision obligating plaintiffs to remit any Company tax credit or refund to Aaronson personally, and defendants' theory of a right arising "by implication" from the SPA's seller-to-buyer tax indemnification provision is contradicted by the SPA's plain text. Plaintiffs further assert that documentary evidence conclusively refutes the claimed obligation, that the ERC is an employer-level statutory credit belonging to the Company rather than a former shareholder, and that defendants' repeated amendment and re-pleading of the same meritless ERC theory constitutes frivolous and dilatory conduct warranting dismissal with prejudice and an award of costs and attorneys' fees.

In opposition, defendants argue that the amended breach-of-contract counterclaim is sufficiently pleaded because it plausibly alleges that the \$86,613.16 employee retention tax credit arose from defendants' overpayment of pre-closing tax liabilities and that plaintiffs breached the

SPA by retaining that pre-closing tax benefit despite the agreement's allocation of pre-closing tax obligations to defendants. Defendants contend plaintiffs improperly seek dismissal by resolving disputed issues of contract interpretation and intent at the pleading stage, particularly where the SPA is silent on tax credits, and that no documentary evidence conclusively refutes the counterclaim under CPLR 3211(a)(1). Defendants further assert that plaintiffs' motion is an improper attempt for summary judgment and that sanctions are unwarranted because the counterclaim is colorable, raises legitimate factual and legal issues, and is not frivolous under 22 NYCRR 130-1.1.

In reply, plaintiffs argue that defendants' opposition confirms the fatal pleading defect in the amended counterclaim, insofar as defendants admit the SPA contains no provision requiring plaintiffs to remit an employer-level ERC refund to Aaronson personally and instead seek to create such a duty "by implication" from contractual silence. Plaintiffs reassert that the SPA's tax provisions allocate taxes and refunds at the Company level and that § 7.03 is a one-way seller-to-buyer indemnity, leaving no basis for an implied payment obligation. Plaintiffs further contend that settled contract law bars courts from inventing missing terms, that this is a legal deficiency properly resolved on a CPLR 3211 motion, and that defendants' continued pursuit of this theory supports dismissal with prejudice and an award of fees and costs.

### Discussion

"A motion to dismiss pursuant to CPLR 3211(a)(1) will be granted only if the documentary evidence resolves all factual issues as a matter of law and conclusively disposes of the plaintiff's claim" (*Fontanetta v Doe*, 73 AD3d 78, 83 [2d Dept 2010] [citation and internal quotation marks omitted]). Such documentary evidence must be "of undisputed authenticity" (*id.*). Indeed, "[t]o constitute documentary evidence, the evidence must be unambiguous, authentic, and undeniable"

(*Xu v Van Zwielen*, 212 AD3d 872, 874 [2d Dept 2023] [citation and internal quotation marks omitted]).

Here, the SPA constitutes undisputed documentary evidence and conclusively disposes of defendants' breach of contract counterclaim as a matter of law. Defendants allege that because "Section 7.3 of the SPA indemnifies PCA for tax liabilities that arose during pre-closing tax periods," "[c]onversely, by implication, the provision allows Aaronson to recover a refund for tax over payments that occurred during pre-closing tax periods." The plain language of the SPA forecloses such a theory.

Section 7.3 of the SPA provides:

"Section 7.03 Tax Indemnification. Seller shall indemnify the Company, Buyer, and each Buyer Indemnitee (as defined in Section 8.02) and hold them harmless from and against: (a) all Taxes of the Company or relating to the business of the Company for all Pre-Closing Tax Periods; and (b) any and all Taxes of any Person imposed on the Company arising under the principles of transferee or successor liability or by contract, relating to an event or transaction occurring before the Closing Date. In each of the above cases, together with any out-of-pocket fees and expenses (including attorneys' and accountants' fees) incurred in connection therewith, Seller shall reimburse Buyer for any Taxes of the Company that are the responsibility of Seller pursuant to this Section within ten (10) days after payment of such Taxes by Buyer or the Company."

Nothing in Section 7.03 creates, or even suggests, an affirmative obligation requiring buyer or the Company to remit a Company tax refund or credit to seller, much less to Aaronson personally. To the contrary, Section 7.03 is an unambiguous one-way indemnification and reimbursement provision running solely from seller to buyer and the Company. Defendants' attempt to invert that provision into a reciprocal refund-payment obligation finds no support in the text of the agreement and is flatly contradicted by its structure.

Section 7.01 of the SPA further confirms this conclusion. That provision governs tax covenants and provides, in relevant part, that "Seller shall prepare, or cause to be prepared, all Tax Returns required to be filed by the Company and the Closing Date with respect to a Pre-Closing

Tax Period, and shall be responsible for any Tax Liability for a Pre-Closing Tax Period.” Like Section 7.03, Section 7.01 contains no language assigning Company tax credits or refunds to seller or obligating buyer or the Company to remit such amounts to Aaronson following the sale.


Accordingly, the SPA conclusively refutes defendants’ assertion that a contractual obligation exists requiring plaintiffs to pay over an alleged ERC refund to Aaronson.

### Conclusion

Based on the foregoing, plaintiffs’ motion is granted to the extent that defendants’ counterclaim alleging breach of contract is hereby dismissed. The remainder of plaintiffs’ motion is denied.

Any argument not explicitly addressed herein was considered and deemed to be without merit or unnecessary to address given the court’s determination.

ENTER:

  
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Honorable Reginald A. Boddie  
Justice, Supreme Court

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