

<b>Free Holdings Inc. v McCoy</b>
2026 NY Slip Op 30599(U)
February 13, 2026
Supreme Court, Kings County
Docket Number: Index No. 518679-2025
Judge: Peter P. Sweeney
Cases posted with a "30000" identifier, i.e., 2013 NY Slip Op <u>30001</u> (U), are republished from various New York State and local government sources, including the New York State Unified Court System's eCourts Service.
This opinion is uncorrected and not selected for official publication.

SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF KINGS, PART 73

Index No.: 518679-2025  
Motion Date: 11-3-25  
Mot. Seq. No.: 1

-----X  
FREE HOLDINGS INC.,

Plaintiff,

-against-

**DECISION/ORDER**

KEVIN MCCOY,

Defendant.  
-----X

The following papers, which are e-filed with NYCEF as items 7-22, were read on this motion:

In this action for breach of a unilateral contract and for declarative relief, the Defendant Kevin McCoy moves for an order pursuant to CPLR 3211(a)(1), (a)(5), and (a)(7) dismissing the complaint of Plaintiff Free Holdings Inc. in its entirety. The Defendant also seeks an award of attorneys' fees and costs, pursuant New York Civil Rights Law §§ 70-a and 76-a, and CPLR 3211(a)(7) and 3211(g), and such other and further relief that the Court deems just and proper.

**I. THE COMPLAINT:**

In the complaint, Plaintiff alleges that in 2014, the Defendant created "*Quantum*", a piece of moving digital art. On or around May 2, 2014, he thereafter created or "minted" a non-fungible token (NFT) on a blockchain by the name of Namecoin and associated the NFT with *Quantum*. Plaintiff claims that the Quantum NFT is universally regarded as the first NFT ever created and one of the most historically significant artworks of the NFT movement. Plaintiff claims that when the Defendant created the NFT, he included on the Namecoin blockchain text which stated: "Title transfers to whoever controls this blockchain entry".

Plaintiff alleges that a Namecoin record must be updated every 36,000 blocks (roughly every 200–250 days) to maintain ownership of the record. Since the Defendant failed to update the record, which he refers to as the 709a record, in January 2015, Defendant surrendered ownership. Plaintiff alleges that in April 2021, it claimed ownership of the lapsed record.

001

ⓓ

Plaintiff goes onto allege that in May 2021, Sotheby's announced that it would conduct an auction, in which *Quantum*, along with other artwork, would be put up for sale. Following the announcement, Plaintiff alleges that the Defendant minted a new NFT on another blockchain by the name of Ethereum and associated *Quantum* with that NFT. Plaintiff claims that despite its attempts to discuss the matter, the Defendant proceeded to sell the Ethereum-based version of *Quantum* for \$1.47 million to a collector known as "Sillytuna."

Plaintiff alleges two causes of action, a cause of action for breach of a unilateral contract and a cause of action for a declaratory judgment. With respect to the claim of breach of a unilateral contract, Plaintiff alleges that the Defendant's statement on the Namecoin blockchain that: "Title transfers to whoever controls this blockchain entry" constituted a unilateral offer that Free Holdings accepted by taking control of the record. Plaintiff alleges the Defendant breached this contract by purporting to sell *Quantum* to a third party.

In the second cause of action, Plaintiff seeks a declaration under CPLR § 3001 resolving the rights of the parties under the contract and declaring that Plaintiff is the rightful owner of *Quantum*. In addition to the aforesaid declaration, Plaintiff seeks as alternative relief an award of compensatory damages for the loss of *Quantum* in an amount of not less than \$1.47 million.

## II. THE MCCOY AFFIDAVIT:

In support of the motion, the Defendant submitted his own affidavit. He confirmed that he is the creator *Quantum*, which he described as a moving image stored in ".gif" format. He states that he created *Quantum* on or about May 2, 2014, and to document the artwork's authenticity, he minted an NFT on the Namecoin blockchain. He explicitly describes this NFT, not as the artwork itself, but as a "blockchain entry" that functions as a digital bill of sale or certificate of title.

He stated that after creating the NFT, Namecoin issued him a unique private key that is stored in a "digital wallet." He asserts that the NFT can *only* be controlled or transferred through use of this private key. He maintains that he has maintained this key in his possession since May 2, 2014 and has never used it to initiate a transfer to anyone.

Defendant also distinguished between the NFT and the Namecoin "name" (the name label used to associate with the record). He stated that when he created the NFT, he registered a name in the Namecoin namespace to associate with it. He admitted that he chose not to re-register/renew this name. He stated that under Namecoin's protocol, this allowed other users to claim that name for their own property. Because he kept the private key to the NFT but allowed the associated name registration to lapse, he claims that the NFT became "frozen" or "burned." McCoy maintains that while he remains the legal owner of the NFT, it is technically impossible for him—or anyone else—to transfer it.

With respect to the language that is the basis to Plaintiff's claim of unilateral contract, "Title transfers to whoever controls this blockchain entry", defendant contends that control refers strictly to the possession of the encrypted private key. He explicitly rejected Free Holdings' argument that "control" refers to whoever re-registered the lapsed Namecoin name. He asserts that this text was never an "offer" to transfer the NFT to whoever claimed the name label, noting such an offer would be "technically impossible" because all Namecoin transactions require the unique private key.

## **DISCUSSION:**

### **A. Plaintiff's First Cause of Action for Breach of a Unilateral Contract:**

On a motion to dismiss pursuant to CPLR 3211(a)(7), the court must afford the pleading a liberal construction, accept all facts as alleged in the pleading to be true, accord the plaintiff the benefit of every possible favorable inference, and determine only whether the facts as alleged fit within any cognizable legal theory (*Leon v. Martinez*, 84 N.Y.2d 83, 87–88, 638 N.E.2d 511, 614 N.Y.S.2d 972 [1994]). The sole criterion is whether the pleading states a cause of action, and if from its four corners factual allegations are discerned which taken together manifest any cause of action cognizable at law, a motion for dismissal will fail (*Guggenheimer v. Ginzburg*, 43 N.Y.2d 268, 275, 372 N.E.2d 17, 401 N.Y.S.2d 182 [1977]). On such a motion, however, the Court may consider affidavits and dismiss an action where the affidavits establish conclusively that the plaintiff has no cause of action (*Sokol v. Leader*, 74 A.D.3d 1180, 1182, 904 N.Y.S.2d 153 [2d Dep't 2010]). Here, Plaintiff's complaint, when considered along with the McCoy affidavit,

conclusively demonstrates that the Plaintiff has no cause of action for breach of a unilateral contract.

A unilateral contract is a contract in which the offer invites acceptance not in the form of a promise, but rather, in the form of actual performance (*Ingrassia v. Shell Oil*, 394 F.Supp. 875, 882 [S.D.N.Y. 1975]; *Huntington Pennysaver, Inc. v. Tire Supply Corp. of Long Island*, 59 Misc. 2d 268, 298 N.Y.S.2d 824 [1969]). The first step in determining whether an alleged unilateral contract exists is to determine whether there is a sufficiently definite offer such that its acceptance will give rise to an enforceable agreement (*Joseph Martin, Jr., Delicatessen, Inc. v. Schumacher*, 52 N.Y.2d 105, 109, 436 N.Y.S.2d 247, 417 N.E.2d 541 [1981]). Definiteness as to material matters is of the very essence of contract law, as "impenetrable vagueness and uncertainty will not do" (*id.*); see also *Express Indus. & Terminal Corp. v. New York State Dept of Transp.*, 93 N.Y.2d 584, 589, 715 N.E.2d 1050, 1053 [1999]. Whether a contract is bilateral or unilateral, there must be a manifestation of mutual assent sufficiently definite to assure that the parties are truly in agreement with respect to all material terms (*Matter of Express Indus. & Term. Corp. v. New York State Dept. of Transp.*, 93 N.Y.2d 584, 589, 693 N.Y.S.2d 857, 715 N.E.2d 1050 [1999]) and party asserting the existence of a contract must establish that the contract is reasonably certain in its material terms to be capable of judicial enforcement (see *166 Mamaroneck Ave. Corp. v. 151 E. Post Rd. Corp.*, 78 N.Y.2d 88, 91 [1991]; *Four Seasons Hotels Ltd. v. Vinnik*, 127 A.D.2d 310, 317 [1st Dept 1987]).

Where a contract's material terms are not reasonably definite, such as where the terms are vague, indefinite, uncertain, or ambiguous, an alleged contract is unenforceable (*McDonald v. Acker, Merrall & Condit Co.*, 192 A.D. 123, 125, 182 N.Y.S. 607, 609 [App. Div. 1920]; *Varney v. Ditmars*, 217 N.Y. 223, 111 N.E. 822 [1916]; *Behrends v. White Acre Acquisitions, LLC*, 54 A.D.3d 700, 701, 865 N.Y.S.2d 227, 228 [2008]). In determining whether any contract provision is ambiguous and unenforceable, a court must determine as a matter of law whether the meaning of a material contract provision provides a reasonable basis for a difference of opinion (*Weston v. Cornell Univ.*, 56 A.D.3d 1074, 1075, 868 N.Y.S.2d 364, 365 [2008]; *Capital Dist. Enters., LLC v. Windsor Dev. of Albany, Inc.*, 53 A.D.3d 767, 770, 861 N.Y.S.2d 816 [2008]; see *CV Holdings, LLC v. Artisan Advisors, LLC*, 9 A.D.3d 654, 656, 780 N.Y.S.2d 425 [2004]; *Pozament Corp. v. AES Westover, LLC*, 27 A.D.3d 1000, 1001, 812 N.Y.S.2d 154 [2006]).

Applying these principles, the 2014 Namecoin inscription—"Title transfers to whoever controls this blockchain entry"—is fatally vague and fails to manifest a clear, definite, and explicit offer. It is unclear from the face of the statement whether Title refers to the digital artwork (the .gif file), the specific Namecoin token (NFT #1), the right to a name label on the Namecoin blockchain, or all three. Thus, the alleged offer fails to define the undertaking, or the specific asset being transferred.

The term "controls" also lacks a definite and precise meaning and is subject to a reasonable difference of opinion. Plaintiff suggests that "control" is achieved simply by occupying the digital workspace or entry. The Defendant contends that "control" is the power to authorize and sign transactions—an ability that is impossible without the "special key", which was never transferred. Because the phrase "Title transfers to whoever controls this blockchain entry" does not explicitly define the mechanism of that control, there was no clear meeting of the minds.

**B. Plaintiff's Second Cause of Action for Declarative Relief:**

Plaintiff's second cause of action, in which Plaintiff seeks a declaratory relief, is judgment pursuant to CPLR § 3001, is also dismissed. In this cause of action, Plaintiff seeks resolution of respective rights and duties of the parties under the purported contract. This claim is predicated entirely upon the Plaintiff's contention that it accepted a unilateral offer and thereby became the "sole and rightful owner" of the Quantum NFT. Because this Court has determined as a matter of law that the Plaintiff does not have a viable cause of action for breach of the alleged unilateral contract, this cause of action also fails as a matter of law.

Based on the foregoing, the court need not address defendants remaining arguments in favor of dismissal.

Finally, the Defendant has not demonstrated, as matter of law, his entitlement to an award of attorneys' fees and costs, pursuant New York Civil Rights Law §§ 70-a and 76-a or any other provision of law. If the Defendants intends to pursue these claim, Defendant is directed to commence a separate action.

Based on the foregoing, it is hereby

**ORDERED** that Defendants' motion to dismiss is **GRANTED** in its entirety.

This constitutes the decision and order of the Court.

Dated: February 13, 2026

**PPS**

---

**PETER P. SWEENEY, J.S.C.**

Note: This signature was generated electronically pursuant to Administrative Order 86/20 dated April 20, 2020

11-03-25-FREE HOLDING-1-518679-2025

KINGS COUNTY CLERK  
FILED

2026 FEB 17 A 9:29