

Oxford Coverage, Inc. v HUB Intl. Group Northeast, Inc.

2026 NY Slip Op 31260(U)

March 27, 2026

Supreme Court, Kings County

Docket Number: Index No. 514953-2020

Judge: Anne J. Swern

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At an IAS Trial Term, Part 75 of the Supreme Court of the State of New York, Kings County, at the Courthouse located at 360 Adams Street, Brooklyn, New York on the 27th day of March 2026

P R E S E N T: HON. ANNE J. SWERN, J.S.C.

OXFORD COVERAGE, INC. and JOSEPH SCHWARTZ,

Plaintiff(s),

-against-

HUB INTERNATIONAL GROUP NORTHEAST, INC.,

Defendant(s).

DECISION & ORDER

Index No.: 514953-2020

Calendar No.: 36

Motion Seq.: 004

Return Date: 11/13/2026

Recitation of the following papers as required by CPLR 2219(a):

**NYSCEF
Papers Numbered**

Notice of Motion and Supporting Documents	36-40
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Upon the foregoing papers, the decision and order of the Court is as follows:

This is an action for breach of an Asset Purchase Agreement dated 10/1/2015 between the corporate defendant and plaintiff Schwartz in his individual capacity. The action was commenced on 8/14/2020. Before the completion of discovery, defendant filed this motion for an Order dismissing the complaint pursuant to CPLR 3211 [a] [1] based on documentary evidence that establishes a complete defense and CPLR 3211 [a] [7] based plaintiff’s failure to state a cause of action on 3/6/2025 after the parties reached an impasse in discovery. The motion is granted.

It is defendant’s position that “plaintiffs were duty-bound by the terms of the contract, an Asset Purchase Agreement, by and among HUB, Oxford, and Schwartz dated 10/1/2015 [the

“APA,” [Exhibit B], to maintain the records which plaintiffs now seek to compel HUB to produce, and that materially breached the APA by failing to do so.”

According to the APA, defendant asserts that Oxford and Schwartz were to transfer certain records concerning the insurance business to HUB, including their accounts receivable, but failed to do so. The APA also provided that Oxford and Schwartz, as Oxford’s sole shareholder, were to retain books and records relating to the purchased assets for a period of seven (7) years from the closing date. And would provide access to their records upon reasonable advance written notice. Lastly, defendant contends that if plaintiffs wished to dispose of the foregoing records prior to the end of the seven (7) year period, they were to provide defendant with a reasonable opportunity to copy such records at their own expense.

Despite the foregoing, plaintiffs discarded the records without notice to defendant and now claim that they cannot determine the amounts owed to them and by whom. Plaintiffs have commenced this action to collect outstanding debts, including premium payments, due and owing to them prior to the closing date [of the agreement]. Therefore, defendant asserts that it has a complete defense and/or prevail because plaintiffs’ complaint fails to state a cause of action in that they failed to provide the records to defendant and destroyed the records without notice to defendant. Essentially, defendant cannot provide what was not provided to them by plaintiffs.

In opposition, plaintiffs argue that assuming they are in breach, this breach has no material effect concerning damages caused by HUB for failing to make payments to plaintiffs under Sections 3.3 [c] and 3.4 [c] and [d] of the APA (True-Up Payments, Earnout Payments and Bonus Earnout Payments). It is plaintiffs’ position that defendant is misinterpreting the contract and under CPLR 3211 [d], “a plaintiff may show that unavailable facts might exist to justify

denial of the motion.” (*Dine-A-Mate, Inc. v J.B. Noble’s Restaurant*, 240 AD2d 802, 804, [3d Dept 1997]). Plaintiff asserts that the defendant continually delays discovery.

On a motion to dismiss a complaint for failure to state a cause of action under CPLR 3211 [a] [7] a court must “accept the facts as alleged in the complaint as true, accord plaintiffs 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 NY2d 83, 87-88 [1994]; see *Goldberg v KOSL Bldg. Group, LLC*, 236 AD3d 995, 996 [2d Dept 2025]; *Boyle v North Salem Cent. Sch. Dist.*, 208 AD3d 744, 745 [2d Dept 2022]). “At the same time, however, ‘allegations consisting of bare legal conclusions as well as factual claims flatly contradicted by documentary evidence are not entitled to any such consideration’ ” (*Simkin v Blank*, 19 NY3d 46, 52 [2012], quoting *Maas v Cornell Univ.*, 94 NY2d 87, 91 [1999]).

“[W]here evidentiary material is submitted and considered on a motion to dismiss a complaint pursuant to CPLR 3211 [a] [7] and the motion is not converted into one for summary judgment, the question becomes whether the plaintiff has a cause of action, not whether the plaintiff has stated one and, unless it has been shown that a material fact as claimed by the plaintiff to be one is not a fact at all and unless it can be said that no significant dispute exists regarding it, dismissal should not eventuate” (*4 Colonial Dr., LLC v Suburban Consultants, Ltd.*, 242 AD3d 1155, 1157-1158 [2d Dept 2025] [internal quotation marks omitted]; see *Guggenheimer v Ginzburg*, 43 NY2d 268, 275 [1977]).

“A motion to dismiss a complaint pursuant to CPLR 3211 [a] [1] may be granted only if the documentary evidence submitted by the moving party utterly refutes the

factual allegations of the complaint and conclusively establishes a defense to the claims as a matter of law” (*Hamer v FPG Am., LLC*, 235 AD3d 624, 625 [2025] [internal quotation marks omitted]; see *533 Park Ave. Realty, LLC*, 156 AD3d 744, 746 [2017]).

Here, the calculations of amounts owed to plaintiffs before the agreement’s closing date cannot be determined without the discarded accounts receivable information that was never provided to defendant per the terms of the APA. Thus, as a matter of law, defendant has established a complete defense based on the terms of the APA (*Hamer v FPG Am., LLC*, 235 AD3d 625; *533 Park Ave. Realty, LLC*, 156 AD3d 746). Consequently, the request for relief under CPLR 3211 [a] [7] is rendered academic.

The Court has considered the parties’ remaining arguments and finds same to be without merit.

Accordingly, it is hereby

ORDERED that defendant’s motion for an order per CPLR 3211 [a] [1] dismissing this action in its entirety is GRANTED, and it is further

ORDERED that the Clerk shall enter judgment accordingly.

This constitutes the decision and order of the Court.

E N T E R:



Hon. Anne J. Swern, J.S.C.

Dated: 3/27/2026