

Eminent Funding, LLC v Global Supply Sys., Inc.

2026 NY Slip Op 31262(U)

March 26, 2026

Supreme Court, Kings County

Docket Number: Index No. 517529/2023

Judge: Anne J. Swern

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This opinion is uncorrected and not selected for official publication.

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 26th day of March 2026.

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

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EMINENT FUNDING, LLC,

Plaintiff,

-against-

GLOBAL SUPPLY SYSTEM, INC, LE PARC 902 LLC, and VICTOR GARCIA REY AKA VICTOR GARCIA,

Defendants.

DECISION & ORDER

Index No.: 517529/2023

Calendar No.: 19

Return Date: 1/15/2026

Motion Seq. No.: 5

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

**NYSCEF
Papers Numbered**

Notice of Motion, Affirmation in Support, and Supporting Exhibits.....66-76

Upon the foregoing papers and after oral argument, the decision and order of the Court is as follows:

This is a motion by Plaintiff, EMINENT FUNDING, LLC (“plaintiff”), for an order renewing plaintiff’s motion for summary judgment pursuant to CPLR § 2221, and upon renewal, granting summary judgment to plaintiff pursuant to CPLR § 3212.

Plaintiff initially served a motion for summary judgment on 5/6/2024 (MS #2). The motion was originally assigned to Justice Kerry Ward and then reassigned to Justice Steven Z. Mostofsky in Motion Part 9. This motion was marked off the motion calendar on 3/27/2025 based on plaintiff’s failure to appear for oral argument. Plaintiff then served a second motion for summary judgment on 6/9/2025 (MS #3). When MS #3 was scheduled before Justice Mostofsky in Part 9, he issued a recusal order directing that this action, together with plaintiff’s summary

judgment motion, were to be reassigned to another justice of this Court. Although Justice Mostofsky issued the recusal order, plaintiff's motion was inadvertently marked off the motion calendar instead of being transferred to another Court Part. Plaintiff now moves for an order per CPLR § 2221 granting leave to renew the motion for summary judgment and upon renewal, granting summary judgment in plaintiff's favor (MS #5).

Plaintiff asserts that on or about January 18, 2023, and March 8, 2023, plaintiff and defendants GLOBAL SUPPLY SYSTEM, INC. and LE PARC 902 LLC ("defendants") entered into two agreements, whereby plaintiff agreed to purchase all rights to a portion of defendants' future receivables. As a condition to plaintiff's purchase under the agreements, defendant VICTOR GARCIA REY AKA VICTOR GARCIA ("defendant Garcia") personally guaranteed any and all amounts owed to plaintiff by defendants, upon a breach of performance by defendants.

Pursuant to the agreements, defendants agreed to maintain one bank account approved by plaintiff, from which defendants authorized plaintiff to make ACH withdrawals until the purchased receivables were fully paid to plaintiff. Defendants met their obligations under the agreements but then stopped delivering the purchased receivables to plaintiff. According to plaintiff, defendants never requested a reconciliation or adjustment of the weekly delivery amount per the terms of the agreements. As such, plaintiff asserts that defendants are obligated to remit \$51,279.38, plus costs, disbursements, and statutory interest from April 6, 2023, and attorney's fees.¹

Summary judgment may be granted only when no triable issue of fact exists (*Alvarez v Prospect Hospital*, 68 NY2d 320, [1986]). "A party moving for summary judgment must make a

¹ Defendants admitted that they failed to perform their obligations under the agreements and admitted their current obligation to deliver \$51,279.38 to plaintiff.

prima facie showing of entitlement to judgment as a matter of law, producing sufficient evidence to demonstrate the absence of any material issue of fact. However, a failure to demonstrate a *prima facie* entitlement to a summary judgment motion, requires a denial of the motion regardless of the adequacy of the opposing papers” (*Ayotte v Gervasio*, 81 NY2d 1062, 1063 [1993], citing *Alvarez v Prospect Hospital*, 68 NY2d 324). “Once this showing has been made, the burden shifts to the nonmoving party to produce evidentiary proof in admissible form sufficient to establish the existence of material issues of fact that require a trial for resolution” (*Giuffrida v Citibank*, 100 NY2d 72, 81 [2003] and *Alvarez v Prospect Hospital*, 68 NY2d 324).

As held in *Atipana Credit Opportunity Fund I, LP v Empire Restaurants AZ Corp* (80 Misc 3d 1208[A], 2023 NY Slip Op. 50939[U] [Sup Ct, Kings County 2023]), (a) the party moving for summary judgment must present a prima facie case of entitlement to judgment as a matter of law, tendering sufficient evidence in admissible form demonstrating the absence of material issues of fact, and the failure to make such a showing requires denial of the motion; (b) inconsistencies which appear on the face of plaintiff's own papers prohibit the granting of summary judgment, despite the inadequacy of the opposing papers; and (c) even in the absence of opposition, it would be unconscionable for this Court to grant summary judgment to a moving plaintiff where there is a complete absence of the most basic prima facie case of entitlement to judgment as a matter of law.

Despite plaintiff's argument that defendants have not upheld their end of the bargain by engaging in non-payment, plaintiff's motion for summary judgment is denied. Plaintiff has failed to establish all the elements of a breach of contract claim (*Cruz v Cruz*, 213 AD3d 805, 807 [2d Dept 2023]) and a *prima facie* entitlement to summary judgment through admissible evidence (*Alvarez v Prospect Hospital*, 68 NY2d 324 and *Giuffrida v Citibank*, 100 NY2d 81).

The essential elements to recover damages for breach of contract are the existence of a contract, plaintiff's performance, defendant's breach of its contractual obligations, and damages (*see Cruz v Cruz, supra*). Here, plaintiff did not submit certified bank records evidencing either a wire transfer or canceled bank check to establish proof of funding (CPLR § 4518). The statements in plaintiff's affidavit are inadmissible to establish performance under the contract. Likewise, the print-out of the ledger submitted as evidence of defendants' breach constitutes inadmissible hearsay.

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

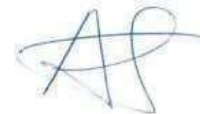
Accordingly, it is hereby

ORDERED that

Plaintiff's request for an order renewing their motion for summary judgment pursuant to CPLR § 2221 is GRANTED. However, upon renewal, plaintiff's request granting summary judgment pursuant to CPLR § 3212 is DENIED.

This constitutes the decision and order of the Court.

ENTER:



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

Dated: 3/26/2026