

CFG Merchant Solutions, LLC v Triple T & Co. LLC
2026 NY Slip Op 31295(U)
March 30, 2026
Supreme Court, Kings County
Docket Number: Index No. 511905/2025
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 30th day of March 2026.

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

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CFG MERCHANT SOLUTIONS, LLC,

Plaintiff,

-against-

TRIPLE T & COMPANY LLC DBA TRIPLE T & CO
AND TRAVON TAYLOR,

Defendants.

DECISION & ORDER

Index No.: 511905/2025

Calendar No.: 7

Return Date: 1/15/2026

Motion Seq. No.: 1

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

**NYSCEF
Papers Numbered**

Notice of Motion, Affirmation in Support, Memorandum of Law in Support,
Memorandum of Law in Opposition, Plaintiff’s Affidavit, Plaintiff’s Attorney’s
Affirmation, and Supporting Exhibits.....3-12

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

This is a motion by defendants TRIPLE T & COMPANY LLC DBA TRIPLE T & CO and TRAVON TAYLOR (“defendants”) for an order pursuant to CPLR § 3211 (a) (7) dismissing the complaint because plaintiff CFG MERCHANT SOLUTIONS, LLC (“plaintiff”) has failed to state a cause of action for a breach of contract. Furthermore, defendants request an extension of time to answer pursuant to CPLR § 2004.

On or about February 26, 2025, the parties entered into an agreement whereby plaintiff agreed to buy all rights of company defendant’s future receivables. Plaintiff funded the agreement having a face value of \$59,600. The purchase amount for those receivables was

\$40,000.00. Defendant Taylor agreed to guarantee any and all amounts owed to plaintiff from the corporate defendant. Pursuant to the agreement, the corporate defendant agreed to have one bank account. Plaintiff alleges that defendants initially met their obligation under the agreement by making payments totaling \$6,387.00. But, after March 27, 2025, defendants failed and refused to make any additional payments, leaving a balance due of \$53,213.00. On March 31, 2025, defendants stopped making payments while conducting regular business operations. Despite due demand, the corporate defendant has failed to pay the remaining amounts due and owing to plaintiff under the agreement. As such, plaintiff contends that it is owed \$53,213.00, plus additional interest, costs, and disbursements.

Defendants assert that under the contract, the parties agreed to certain transactions and occurrences that would result in a default or breach of contract. But defendants assert that plaintiff's complaint fails to provide the Court and the parties with notice of these transactions and occurrences necessary to establish a breach of contract cause of action. According to defendants, plaintiff does not allege that defendants violated a specific event enumerated in the contract that constitutes a default/breach of the contract. Specifically, defendants assert that plaintiff has failed to plead with specificity that defendants breached their contractual obligations as defined in the agreement.

Concerning defendants' request for an extension of time to answer, they cite to CPLR § 2004, which provides that "Except where otherwise expressly prescribed by law, the Court may extend the time fixed by any statute, rule or order for doing any act, upon such terms as may be just and upon good cause shown, whether the application for extension is made before or after the expiration of the time fixed."

In opposition, plaintiff asserts that it is evident that defendants received the purchase price of \$40,000.00 from plaintiff that has not been fully repaid, and that plaintiff may also allege in the alternative a claim for unjust enrichment. Moreover, plaintiff asserts that it has sufficiently set forth in the complaint a claim for breach of contract: (1) the existence of an enforceable agreement; (2) performance by plaintiff; (3) that defendants breached the agreement; and (4) that plaintiff sustained damages as a direct result of defendants' breach (*JP Morgan Chase v J.H. Elec. Of N.Y., Inc.*, 69 AD3d 802, 803 [2d Dept 2010]). Applying these four elements, plaintiff asserts that it (1) laid out the specifics around the parties entering into the agreement on February 26, 2025, and the names of the parties entering into the agreement; (2) plaintiff showed that they performed their end of the agreement by funding defendants, which was specifically proven by the fact that defendants made payments on the agreement in the amount of \$6,387.00; (3) plaintiff specifically cites to § 9 of the agreement that defendants breached on or about April 3, 2025, when defendants stopped making payments and by intentionally impeding and preventing plaintiff from making the agreed-upon ACH withdrawals from the bank account while conducting regular business operations as per § 1 of the agreement¹; and (4) by setting out the terms of the agreement and making a showing of payments made by defendants, plaintiff adequately pled the amount in damages it incurred as a direct result of defendants' breach.

Regarding defendants' request for an extension of time to answer, plaintiff requests that the Court require strict compliance with CPLR § 3211 (f) and allow defendants an extension of 10 days from service of an order with notice of entry to file their answer to plaintiff's complaint.

¹ Section 9 of the agreement states the following: "Breach of Contract. A "Breach" of this Agreement shall include, but not be limited to, any of the following events: (a) Seller intentionally interferes with Buyer's right to collect the Purchased Percentage or the Daily Amount; (b) the breach by Seller of any covenants, terms or conditions contained in this Agreement; (c) any representation or warranty made by the Seller in this Agreement or Seller's application for this Agreement is incorrect, false or misleading; and (d) Seller fails to provide bank statements and other reasonably requested financial information within seven (7) calendar days after request from Buyer."

Moreover, plaintiff refers to CPLR § 2004, which requires good cause shown to stray from strict compliance of CPLR § 3211 (f). Here, plaintiff asserts that defendants have failed to provide this Court with any good cause reasoning upon which the Court could rely in extending defendants' time to answer plaintiff's complaint by 30 days.²

“Upon a motion to dismiss for failure to state a cause of action pursuant to CPLR 3211(a)(7), the complaint must be liberally construed in the light most favorable to the plaintiff, accepting the facts as alleged to be true” (*Kats v East 13th St. Tifereth Place, LLC*, 73 AD3d 706, 707 [2d Dept 2010]). “[T]he court must afford the pleading a liberal construction, accept the facts as alleged as true, accord the claimant the benefit of every favorable inference, and determine only whether the facts as alleged fit within any cognizable legal theory” (*Yellow Book Sales & Distrib. Co., Inc. v Hillside Van Lines, Inc.*, 98 AD3d 663, 664 [2d Dept 2012]).

Plaintiffs may submit affidavits in opposition to a motion to dismiss pursuant to CPLR § 3211 (a) (7) but the statute does not obligate them to do so to avoid a dismissal (*see Rovello v Orofino Realty Co.*, 40 NY2d 633, 635 [1976]). Therefore, plaintiff may stand on the pleadings alone, “confident that its allegations are sufficient to state all of the necessary elements of a cognizable cause of action” to survive a motion to dismiss under CPLR § 3211 (a) (7) (*id.*).

When determining a motion to dismiss pursuant to CPLR § 3211 (a) (7), the Court must accept the factual allegations in the complaint as true and “accord plaintiffs the benefit of every possible favorable inference and determine only whether the facts as alleged fit into any cognizable legal theory” (*Leon v Martinez*, 84 NY2d 83, 88 [1994]).

² CPLR § 3211 (f) states: Extension of time to plead. Service of a notice of motion under subdivision (a) or (b) before service of a pleading responsive to the cause of action or defense sought to be dismissed extends the time to serve the pleading until *ten* days after service of notice of entry of the order.

CPLR § 2004 states: Except where otherwise expressly prescribed by law, the court may extend the time fixed by any statute, rule or order for doing any act, upon such terms as may be just and upon good cause shown, whether the application for extension is made before or after the expiration of the time fixed.

However, if the Court considers evidentiary material outside the pleadings and the motion is not converted to one for summary judgment, “the question becomes whether the pleader has a cause of action, not whether the pleader has stated one and, unless it has been shown that a material fact as claimed by the pleader is not a fact at all, and unless it can be said that no significant dispute exists regarding it, [a] dismissal should not [be granted]” (*Board of Mgrs. of 100 Congress Condominium v SDS Congress, LLC*, 152 AD3d 478, 480 [2d Dept 2017]).

Here, plaintiff has sufficiently pled a cause of action for breach of contract by setting forth the terms of the contract and the provisions breached by defendants. The question is not whether plaintiff will ultimately prevail on each allegation through admissible evidence. Rather, assuming the allegations are true, the question is whether plaintiff has stated a cause of action that fits within a recognizable cause of action. Plaintiff has alleged that money was advanced but not repaid by defendants per the terms of the contract. Further, the individual defendant breached the guaranty agreement by failing to remit payments when the corporation defaulted (*Board of Mgrs. of 100 Congress Condominium v SDS Congress, LLC*, 152 AD3d 480; *Yellow Book Sales & Distrib. Co., Inc. v Hillside Van Lines, Inc.*, 98 AD3d 664).

Accordingly, it is hereby

ORDERED that

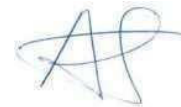
Defendants’ motion for an order pursuant to CPLR § 3211 (a) (7) dismissing the complaint because plaintiff has failed to state a cause of action for a breach of contract is DENIED, and it is further

ORDERED that defendants’ request for an extension of time to answer pursuant to CPLR § 2004 is GRANTED, and it is further

ORDERED that defendants are granted an extension of 10 days from service of notice of entry to file their answer to Plaintiff's complaint.

This constitutes the decision and order of the Court.

ENTER



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

Dated: 3/30/2026