

**S2BN Entertainment Corp. v Aniara Ltd**

2026 NY Slip Op 31415(U)

April 7, 2026

Supreme Court, New York County

Docket Number: Index No. 654220/2025

Judge: Joel M. Cohen

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SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF NEW YORK: COMMERCIAL DIVISION PART 03M

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S2BN ENTERTAINMENT CORP.,

Plaintiff,

- v -

ANIARA LTD, GOLDONDER INVESTORS AB

Defendants.

INDEX NO. 654220/2025

MOTION DATE 09/03/2025,  
02/18/2026

MOTION SEQ. NO. 001 003

**DECISION + ORDER ON  
MOTION**

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HON. JOEL M. COHEN:

The following e-filed documents, listed by NYSCEF document number (Motion 001) 3, 4, 5, 6, 7, 8, 9, 10, 19, 20, 21, 22, 23, 24, 25

were read on this motion to DISMISS.

The following e-filed documents, listed by NYSCEF document number (Motion 003) 33, 34, 35, 36, 37

were read on this motion to DISMISS.

This action concerns an attempt to bring ABBA Voyage—a popular holographic concert celebrating the famous Swedish band—from London to New York. Defendants Aniara Ltd (“Aniara”) and Goldonder Investors AB (“Goldonder”) (collectively, “Defendants”) both move to dismiss all claims asserted by Plaintiff S2BN Entertainment Corp. (“S2BN”), principally on the ground that the dispute ought to be heard in the courts of England and Wales.

For the reasons set forth below, Defendants’ motions are granted.

**FACTUAL BACKGROUND<sup>1</sup>**

According to the Complaint, S2BN, a North American concerts promoter, commenced discussions in October 2022 with Aniara, the presenting company for ABBA Voyage London,

<sup>1</sup> Solely for purposes of this motion, the factual allegations contained in the Complaint are assumed to be true.

and Goldonder, the ABBA Voyage intellectual property rights holder, about expanding ABBA Voyage to New York (NYSCEF 1 [“Compl.”] ¶¶ 8-11).

To preserve the confidentiality of those discussions, S2BN and Aniara executed a mutual non-disclosure agreement (NYSCEF 6 [the “NDA”]) on October 24, 2022 (Compl. ¶ 12). The parties proceeded to exchange confidential information, including information about the London run and S2BN’s proposals for ABBA Voyage NYC (*id.* ¶¶ 12-13). Among other information, S2BN’s proposals included potential venues and curated financial projections as to the concert’s viability (*id.* ¶ 14).

Approximately one year later, on October 29, 2023, S2BN and Goldonder executed a Commercial Term Sheet setting out “a number of non-binding commercial terms (unless otherwise stated) [...] in relation to the operation and promotion” of ABBA Voyage NYC (the “Term Sheet”) (Compl. ¶ 16).

In November 2023, S2BN’s Chairman Michael Cohl met in New York with Jerry Nadal, the International Development Director for ABBA Voyage, and Michael Bolingbroke, Goldonder’s principal and Aniara’s then-CEO, to discuss ABBA Voyage NYC (*id.* ¶ 22). During that meeting, Mr. Cohl requested on behalf of S2BN that several terms set forth in the Term Sheet be revised (*id.* ¶ 23). The parties subsequently exchanged emails regarding the proposed modifications including an email from Mr. Bolingbroke dated November 16, 2023, and signed “Best regards – Mike” (*id.*), attached to which was an unsigned revised version of the Term Sheet (*see* NYSCEF 2 [the “Amended Term Sheet”]). S2BN alleges that Mr. Bolingbroke’s email accepted the revisions on behalf of both Goldonder and Aniara even though Aniara is not a named party to or otherwise referenced in either the Term Sheet or the Amended Term Sheet (Compl. ¶¶ 17, 24).

As relevant here, the Amended Term Sheet contains a “Governing Law and Jurisdiction” provision which provides that:

**This section is legally binding.**

Goldonder and [S2BN] agree that any dispute in connection with this Term Sheet, will be governed by English law with the exclusive jurisdiction of the courts of England and Wales.

(Amended Term Sheet at 7)

Over the following months, the parties participated in discussions concerning the launch of ABBA Voyage NYC (Compl. ¶ 30). In addition, S2BN opened discussions with the New York City Economic Development Council and negotiated a letter of intent with the owner of a prospective site on Eleventh Avenue (*id.* ¶¶ 31, 36).

However, in December 2024, S2BN received an email from Craig Hartenstine, Aniara’s newly appointed CEO, terminating the parties’ relationship and informing S2BN that Aniara and Goldonder would be proceeding without S2BN (*id.* ¶ 41).

The Complaint asserts nine (9) causes of action, all premised on Defendants’ alleged failure to continue their relationship with S2BN and alleged misappropriation of confidential information (*see* Compl. ¶¶ 44-90). Both defendants now move to dismiss the Complaint under CPLR 327(a) (*forum non conveniens*) as well as CPLR 3211(a)(1), (8), and (10).

### **DISCUSSION**

#### **I. Defendants’ motions to dismiss the First, Second, Sixth, and Seventh Causes of Action under CPLR 3211(a)(1)**

CPLR 3211(a)(1) authorizes dismissal based on “a defense [...] founded upon documentary evidence.” And as relevant here, “a contractual forum clause [...] may provide a proper basis for dismissal pursuant to CPLR 3211(a)(1)” (*Landmark Ventures, Inc. v Birger*, 147

AD3d 497, 497 [1st Dept 2017] [citations omitted] [affirming dismissal where agreement selected Tel Aviv]; *see similarly JJJ Prods., LLC v Amazon.com Servs, LLC*, 239 AD3d 479, 480 [1st Dept 2025] [affirming dismissal where agreement selected King County, Washington]).

Defendants contend that the forum selection clause contained in the Amended Term Sheet precludes a New York court from hearing the First (breach of the Amended Term Sheet), Second (breach of oral agreement), Sixth (unjust enrichment), and Seventh (promissory estoppel) Causes of Action (*see* NYSCEF 7 at 9-11; NYSCEF 34 [“Goldonder Br.”] at 8-13). In response, S2BN contends that neither Defendant may rely on the forum selection clause, for separate reasons. Each is addressed in turn.

A. Goldonder’s reliance on the forum selection clause

According to S2BN, Goldonder is prohibited from invoking the forum selection clause because its moving papers preserve the right to contend that “the [Amended] Term Sheet was never agreed to and never became a binding contract” (Goldonder Br. at 2). In those circumstances, S2BN contends, “the forum selection clause (and the choice of law provision) would have no effect” (NYSCEF 37 at 8-12). This argument is unavailing as to the First Cause of Action. Though Goldonder reserves the right to contest the enforceability of the Amended Term Sheet, it is entitled to assume its enforceability (as alleged in the Complaint) on this motion to dismiss for purposes of determining which court should make that decision.

The Second, Sixth, and Seventh Causes of Action must also be dismissed since they fall within the scope of “any dispute in connection with this Term Sheet” and thus are covered by the forum selection provision as well (*see Landmark Ventures*, 147 AD3d at 498 [applying forum selection clause to related tort action]). While S2BN contends these causes of action could survive even if the Court concluded in Goldonder’s favor on the First Cause of Action,

hypothetical judicial determinations are not the touchstone on a motion to dismiss which instead requires the Court to assume the truth of the allegations contained in the Complaint (*see Leon v Martinez*, 84 NY2d 83, 87 [1994]). Here, the Complaint is replete with allegations that Goldonder and S2BN executed a “legally valid and binding” Amended Term Sheet (Compl. ¶¶ 16-25, 45). The Amended Term Sheet is the principal exhibit attached to the Complaint. The Complaint contains no indication that the Amended Term Sheet may not be enforceable, nor does it make any attempt to separate the Second, Sixth, and Seventh Causes of Action which instead are tied up in the alleged execution of the Amended Term Sheet. Having relied heavily upon the Amended Term Sheet, S2BN cannot simply ignore one of its explicitly binding terms (the forum selection provision).

Accordingly, the First, Second, Sixth, and Seventh Causes of Action as asserted against Goldonder are dismissed.<sup>2</sup>

B. Aniara’s reliance on the forum selection clause

As for Aniara, S2BN argues it cannot rely on the forum selection clause because, although it claims Aniara is bound by the Term Sheet generally, the Governing Law and Jurisdiction provision only refers by name to the signatories Goldonder and Mr. Cohl (NYSCEF 19 at 6). This argument is untenable. The First Cause of Action asserts that Aniara wrongfully terminated, repudiated, and breached the Amended Term Sheet (Compl. ¶¶ 44-48). S2BN cannot maintain that Aniara is bound by the terms of the Amended Term Sheet (despite not being

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<sup>2</sup> To the extent the alleged breach of oral contract asserted in the Second Cause of Action is pled in the alternative to, rather than in connection with, the First Cause of Action, it should nonetheless be dismissed on *forum non conveniens* grounds, as explained below.

named) and simultaneously assert that the forum selection clause does not apply because it does not explicitly refer to Aniara.

Alternatively, Aniara can invoke the forum selection clause by virtue of its relationship with Goldonder. “It is well established that a nonsignatory may invoke a forum selection clause if the relationship between the nonparty and the signatory is sufficiently close so that the nonparty’s enforcement of the forum selection clause is foreseeable by virtue of the relationship between the nonparty and the party sought to be bound” (*Freeford Ltd. v Pendleton*, 53 AD3d 32, 40 [1st Dept 2008]). Here, the Complaint alleges that Aniara and Goldonder previously shared representatives—including Mr. Bolingbroke, Goldonder principal and Aniara CEO—who negotiated the Amended Term Sheet, including the Governing Law and Jurisdiction provision, with S2BN (*see* Compl. ¶ 24 [“Bolingbroke’s November 16, 2023 email accepted on behalf of the defendants all the terms of the contract as set forth in the revised Term Sheet”]; ¶ 30 [“Throughout 2024, S2BN held weekly conference calls with Aniara and Goldonder representative Bolingbroke”]). It further alleges that Aniara and Goldonder had been working together on ABBA Voyage London and commenced discussions with S2BN concurrently (*id.* ¶ 12). It was therefore foreseeable that Aniara, by virtue of its relationship with Goldonder and its participation in the negotiations regarding ABBA Voyage NYC, would seek to enforce the forum selection clause contained in the Amended Term Sheet.

Accordingly, the First, Second, Sixth, and Seventh Causes of Action as asserted against Aniara are also dismissed under CPLR 3211(a)(1) in light of the exclusive forum selection provision.

## II. Defendants' motions to dismiss the remaining causes of action under CPLR 327(a)

“When the court finds that in the interest of substantial justice the action should be heard in another forum, the court, on the motion of any party, may stay or dismiss the action in whole or in part on any conditions that may be just” (CPLR 327[a][7]). Although the plaintiff’s choice of forum is entitled to some deference, among the other factors to be considered are: (1) the burden on the New York courts; (2) potential hardship to the defendant; (3) the unavailability of an alternative forum in which plaintiff may bring suit; (4) whether both parties are nonresidents; and (5) whether the transaction from which the cause of action arose occurred primarily in a foreign jurisdiction (*Bangladesh Bank v Rizal Commercial Banking Corp.*, 226 AD3d 60, 70 [1st Dept 2024]; *Islamic Republic of Iran v Pahlavi*, 62 NY2d 474, 479 [1984]). However, “[n]o one factor is controlling” (*Pahlavi*, 62 NY2d, at 479); “[t]he doctrine is flexible and allows the court to make a discretionary determination based on the facts and circumstances of each case” (*Bangladesh Bank*, 226 AD3d, at 70; *see also Shin-Etsu Chem. Co. v ICICI Bank Ltd.*, 9 AD3d 171, 175 [1st Dept 2004]).

Here, the factors weigh in favor of dismissal such that all of S2BN’s claims should be heard together in England and Wales.

### A. Burden on New York courts

It is undisputed that, regardless of whether this Court has jurisdiction over S2BN’s claims against Aniara, at least some, and potentially most, of those claims must be decided in accordance with English law (*see* NDA ¶ 6.2 [“This agreement and any non-contractual obligations arising out of or in connection with it shall be governed by and construed in accordance with the laws of England and Wales and the Parties irrevocably submit to the non-

exclusive jurisdiction of the English courts”]). The same is likely true for S2BN’s claims against Goldonder (Amended Term Sheet at 7 [“Goldonder and [S2BN] agree that any dispute in connection with this Term Sheet, will be governed by English law...”]). Although this Court is certainly capable of applying foreign law, including the common law of England and Wales (*see Thor Gallery at S. DeKalb, LLC v Reliance Mediaworks (USA) Inc.*, 131 AD3d 431, 433 [1st Dept 2015]), the English courts provide a more efficient and natural forum for such issues to be resolved.

B. Potential hardship to Defendants

Aniara is an English corporation based in London and maintains no permanent presence in the United States (Compl. ¶ 4).<sup>3</sup> Goldonder is a Swedish corporation with its principal place of business in Stockholm (*id.* ¶ 5), which is substantially closer to England than to New York. While S2BN contends that Defendants’ personnel can travel to New York for depositions and trial, there is no doubt that litigating this dispute in New York would impose a substantially greater burden on both Aniara and Goldonder than litigating it in England and Wales.

C. The availability of an alternative forum

Not only *may* S2BN’s claims be heard in England and Wales, but its principal claims—breach of the Amended Term Sheet and related causes of action—*must* be heard there for the reasons already explained. To the extent related claims should, where possible, be litigated together—to reduce costs, inconvenience to the parties, and the risk of inconsistent outcomes—the English courts provide an appropriate and preferable forum for this action.

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<sup>3</sup> S2BN asserts jurisdiction based on visits made by Defendants’ representatives during the parties’ negotiations (Compl. ¶ 6).

D. The parties' residency

Accepting the Complaint's allegations as true, S2BN maintains a place of business in New York and conducts business here (Compl. ¶ 8). However, the Complaint does not allege that either Aniara or Goldonder maintain a permanent presence in New York or that they conduct business here beyond the activities giving rise to this action. This factor weighs slightly (albeit not decisively) in favor of S2BN, given the presumptive deference to its choice of home forum.

E. Where the claims arose

The situs of the claims is another mixed factor. S2BN alleges that the bulk of the parties' negotiations concerning ABBA Voyage NYC occurred in New York (*id.* ¶ 7), but the Complaint contains several allegations concerning conduct alleged to have occurred in London (*see id.* ¶ 29 ["S2BN [...] sent a team of consultants to London to analyze the ABBA Voyage production there to further understand the needs of ABBA Voyage NYC"]; ¶ 38 ["S2BN arranged for the chief executive officer of a major New York property owner to visit London and the ABBA arena there and to meet with Ariana representatives"]).

On balance, the Court exercises its discretion to dismiss S2BN's claims against Defendants in favor of them being heard in England and Wales. The forum selection provision mandates that many of the asserted claims by (assumed) agreement must be heard in English court. Requiring the parties to litigate this dispute simultaneously on two continents, occupying the time of two court systems with the possibility of inconsistent results, is an inefficient means of resolution.

**III. Aniara's motion to dismiss all causes of action under CPLR 3211(a)(8)**

Aniara also moves to dismiss on the ground that it has not been properly served. Given the Court's resolution of its other grounds for dismissal, this portion of Aniara's motion is moot.

**IV. Aniara’s motion to dismiss all causes of action under CPLR 3211(a)(10)**

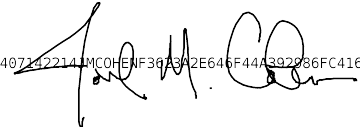
Finally, the question of whether Goldonder (which had not been served in this action when Aniara’s motion was filed) is a necessary party in the absence of whom the Court should not proceed against Aniara is likewise moot given that Goldonder has now been served (*see* NYSCEF 28).

\* \* \*

Accordingly, it is

**ORDERED** that the motions of Defendants Aniara Ltd and Goldonder Investors AB to dismiss the Complaint is granted and the Complaint is dismissed in its entirety (without prejudice to pursuing the action in the courts of England and Wales), with costs and disbursements to Aniara Ltd and Goldonder Investors AB as taxed by the Clerk of the Court, and the Clerk is directed to enter judgment accordingly in favor of Aniara Ltd and Goldonder Investors AB.

This constitutes the Decision and Order of the Court.

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JOEL M. COHEN, J.S.C.

4/7/2026  
DATE

CHECK ONE:	<input checked="" type="checkbox"/>	CASE DISPOSED	<input type="checkbox"/>	NON-FINAL DISPOSITION
	<input checked="" type="checkbox"/>	GRANTED	<input type="checkbox"/> DENIED	<input type="checkbox"/> GRANTED IN PART
APPLICATION:	<input type="checkbox"/>	SETTLE ORDER		<input type="checkbox"/> OTHER
CHECK IF APPROPRIATE:	<input type="checkbox"/>	INCLUDES TRANSFER/REASSIGN	<input type="checkbox"/>	FIDUCIARY APPOINTMENT
			<input type="checkbox"/>	REFERENCE