

War Rd. Music, Inc v Ditto Ltd
2026 NY Slip Op 31447(U)
April 6, 2026
Supreme Court, Kings County
Docket Number: Index No. 517590/2020
Judge: Reginald A. Boddie
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At an IAS Commercial Part 12 of the Supreme Court of the State of New York, held in and for the County of Kings, at the Courthouse, located at 360 Adams Street, Borough of Brooklyn, City and State of New York on the 6th day of April 2026.

P R E S E N T:
Honorable Reginald A. Boddie
Justice, Supreme Court

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WAR ROAD MUSIC, INC and DRIVE-THRU
RECORDS, LLC,

Index No. 517590/2020

Plaintiffs,

Cal. No. 8 MS 7

-against-

DITTO LTD and CHRISTOPHER MOONEY,

Decision and Order

Defendants.

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The following e-filed papers read herein:
MS 7

NYSCEF Doc Nos.
137-165

Upon the foregoing papers, the motion by defendant/counterclaim plaintiff, Ditto Ltd. (“Ditto”) seeking an order pursuant to CPLR 3212 granting it summary judgment (1) dismissing plaintiffs’ first and second causes of action, and (2) granting Ditto summary judgment on liability on its first and second counterclaims is decided as follows:

On June 17, 2019, plaintiff War Road Music Inc. (“WRM”) and Ditto signed a “Sound Recording & Video License Agreement”. On the same date, plaintiff Drive-Thru Records, LLC (“DTR”) and Ditto signed a “Sound Recording & Video License Agreement” (agreements collectively referred to as “Agreements”). According to the complaint, WRM is an artist management company and DTR is a record label company. Ditto is a digital distributor of music. Defendant Christopher Mooney (“Mooney”) is the United States head of operations at Ditto.

In or around February 2020, Ditto, after paying a series of advances pursuant to the Agreements, terminated the Agreements. Plaintiffs thereafter commenced this action alleging that Ditto breached the Agreements by failing to provide the agreed-upon funds and prematurely terminating the Agreements. It is Ditto's position that the Agreements were terminable at will, and thus terminating and stopping payments was not a breach by Ditto. On December 23, 2024, plaintiffs filed their note of issue certifying the completion of discovery.

Ditto's motion seeking summary judgment is premised on two main arguments: (1) Ditto did not breach the Agreements because they were terminable at will; and (2) plaintiffs breached the Agreements by paying the contractual advances to an unrelated third party.

In support of its first argument, Ditto contends that the Agreements lack termination provisions. Secondly, Ditto contends the Agreements do not specify a definite duration but, instead, reflect a baseline duration subject to adjustments, extension and further negotiation at the "long form" stage. According to Ditto, the "term" provisions in the "short form agreements" are, by design, indeterminate with each agreement "subject to extension until recoupment." Because there is no outside date on recoupment, or even a guaranty that recoupment will ever occur, Ditto claims that the term of the Agreements is potentially perpetual. In addition, Ditto asserts that the term under the Agreements is specific to each individual Master delivered and distributed, and each provides for a "Rights Period" that commences on the date of first release of an individual Master Recording or Video. Yet, that there is no corresponding delivery date specified or specific date for the first release of a Master or Video, and the "Rights Period" may be cut short at any time based on plaintiffs' "buyout rights." In light of these facts, Ditto argues that the Agreements were terminable at will by either party, and as such, Ditto's termination on notice in February 2020 was not a breach, as alleged by plaintiffs.

Regarding its second argument, Ditto contends that plaintiffs redirected their contractual advances to a third party, HealthSmart Coffee LLC (“HealthSmart”), which constituted a breach of the Agreements. Ditto states that the Agreements obligated plaintiffs to use the advanced funds for the purposes specified in the Agreements, i.e., in furtherance of the joint enterprise of developing, marketing, and distributing music, which would have been described in more detail in the “long form agreements.” According to Ditto, it was “tricked” into sending the advance to HealthSmart, a stranger to the Agreements and to the parties’ relationship. Ditto contends that HealthSmart acknowledged that it did not make any payments on account of WRM or DTR’s business expenses. Ditto contends that the documents produced in discovery also show that the advances were used by HealthSmart to pay off a HealthSmart business loan and that \$22,231 of it was taken out of the account as cash. Ditto submits that the foregoing constitutes a material breach of the Agreements and, consequently, plaintiffs’ first and second causes of action for breach of contract should be dismissed as precluded by their own breach of the Agreements. In addition, Ditto argues that it is entitled to summary judgment on liability on its first and second causes of action for breach of contract.

In opposition, plaintiffs argue that the plain language of the Agreements do not support Ditto’s position that the Agreements were terminable at will. In support, plaintiffs reference the following provisions therein:

“Term:

Three (3) years from the signing of the contract, subject to Licensee’s rights in the individual Master Recordings & Videos during the Rights Period (subject to extension until recoupment [to be further discussed at Long Form]).

Option:

The Licensor shall grant Licensee a first option for renewing this agreement for an additional three (3) year term, with terms to be negotiated in good faith.

Rights Period:

Notwithstanding the Term contained herein, Licensee will retain its exclusive

rights in each individual Master Recording or Video distributed by Licensee for three (3) years from the date of the first commercial release in the Territory of that Master Recording or Video, but Licensor shall have the ability to buyout the Licensee's rights for two times was[sic] Licensee paid for Masters subject to this Agreement.

Long Form Agreement:

It is the intention of Licensee and the Licensor that they negotiate and enter into a more comprehensive formal long form agreement incorporating the agreed terms of this Agreement together with additional terms and conditions as are standard in agreements of this kind in the music industry (Long Form Agreement). **In the event a Long Form Agreement is not concluded, the parties agree to be bound by the terms and conditions of this Agreement**" (emphasis added).

Based on the aforementioned language, plaintiffs argue that the "term" is three years from the signing of each agreement, i.e., June 17, 2022. As it is undisputed that the parties never entered into the contemplated "long form agreements," plaintiffs argue that "the parties agree[d] to be bound by the terms and conditions of this Agreement." Because the end of the term was June 17, 2022, plaintiffs argue that Ditto's February 2020 termination was either ineffective or a breach of the Agreements. Additionally, that Ditto's failure to make payments due thereafter and perform any other services constituted a breach of the Agreements.

Regarding Ditto's second argument, plaintiffs argue that the placement of the first round of advances into an account in the name of HealthSmart, which is a company owned by Michael Reines, the father of the principals of plaintiffs, is, at the very least, a material issue of fact. Richard Reines, one of plaintiffs' principals, explains, in his "declaration" in support, that the use of the HealthSmart account was an "innocent act of expediency," as plaintiffs had not yet opened accounts in their own company names, and the account, despite its name, was not used by or affiliated with HealthSmart. In any event, plaintiffs contend that Ditto has always known that the HealthSmart account was used only out of expediency, and not for any fraudulent purposes, because, before plaintiffs sent the June 24, 2019 invoice to Ditto, plaintiffs purportedly advised

Ditto that they did not yet have a bank account opened for WRM, and advised Ditto that they were directing payment to an account that was already open. Plaintiffs further argue that, in any event, Ditto has not satisfied its burden on summary judgment as to how the funds were used, especially since Ditto declined to explore the issue during plaintiffs' depositions.

In reply, Ditto argues that plaintiffs' attempt to convert the baseline "three (3) years" language into a rigid durational commitment ignores the immediately qualifying subject-to clauses and the per-work "Rights Period," both of which prevent fixing the overall contract duration with reasonable certainty. In addition, Ditto contends that it does not dispute being bound by the Agreements. Rather, Ditto stresses that the Agreements' reflection of the parties' intention to further negotiate an initial 3-year period of advances that is "subject to [Ditto]'s rights in individual Masters Recordings & Videos during the Rights Period (subject to extension until recoupment [to be further discussed at Long Form])" indicates the lack of fixed duration in the Agreements. Since a long form agreement was not negotiated, Ditto contends that the parties are bound by agreements that contained no termination provision and were of indeterminate duration.

Regarding the use of HealthSmart's account, Ditto submits that plaintiffs' explanations fail to rehabilitate their wrongful direction to Ditto to wire advances to a third-party's account. Moreover, Ditto re-emphasizes that HealthSmart's statements show that advance monies were used by Healthsmart to pay off a HealthSmart business loan and that \$22,231 was taken out of the account as cash.

Discussion

It is well established that summary judgment is granted when "the proponent makes a prima facie showing of entitlement to judgment as a matter of law, tendering sufficient evidence to demonstrate the absence of any material issues of fact, and the opponent fails to rebut that showing" (*Brandy B. v Eden Cent. School Dist.*, 15 NY3d 297, 302 [2010] [citation omitted]).

Once the proponent has made a prima facie showing, the burden then shifts to the motion's opponent to present evidentiary facts in admissible form sufficient to raise a genuine, triable issue of fact (*Zuckerman v City of New York*, 49 NY2d 557, 562 [1980]). If there is any doubt as to the existence of a triable fact, the motion for summary judgment must be denied (*Rotuba Extruders v Ceppos*, 46 NY2d 223, 231 [1978]). Upon a motion for summary judgment, the court's function is one of issue finding rather than issue determination (*Sillman v Twentieth Century-Fox Film Corp.*, 3 NY2d 395, 404 [1957]).

“An agreement set forth in clear, concise terms should be enforced according to those terms” (*Better Living Now, Inc. v Image Too, Inc.*, 67 AD3d 940 [2d Dept 2009] [citation omitted]). “The court must read the agreement as a whole so as not to place undue emphasis on certain words and terms, and must be careful not to distort the meaning of the terms so as to create a new contract between the parties” (*id.* [citation omitted]).

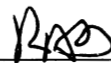
Here, Ditto fails to establish that the Agreements are terminable at will. In fact, the Agreements contain an express term (*see Arthur Cab Leasing Corp. v Sice Mois Hacking Corp.*, 137 AD3d 828 [2d Dept 2016] [finding that contract clearly stated that it was for a term of four years and 10 months], which is “[t]hree (3) years from the signing of the contract, subject to Licensee's rights in the individual Master Recordings & Videos during the Rights Period (subject to extension until recoupment [to be further discussed at Long Form]).” That the term is subject to one or more other things fails to negate the existence of the express term.

Defendants also fail to establish as a matter of law that plaintiffs breached the Agreements by depositing the advances into HealthSmart's bank account. Nothing in the Agreements prohibits the deposit of funds into a bank account not owned by plaintiffs. Rather, the crux of the issue is how the advance monies were used. In this regard, Ditto relies solely on HealthSmart's bank

statements which is insufficient to establish as a matter of law that plaintiffs breached the Agreements by using the funds for a purpose other than towards the joint enterprise.

Based on the foregoing, Ditto's motion seeking summary judgment is denied. Any argument not explicitly addressed herein was considered and either deemed to be without merit or unnecessary to address given the court's determination. This matter shall be scheduled for a virtual pretrial conference on November 23, 2026, at 10:00 AM. A bench trial is scheduled to take place on November 30, 2026.

ENTER:



Honorable Reginald A. Boddie
Justice, Supreme Court

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