

**Meged Funding Group Corp v Creative Frgt. Servs.  
LLC**

2026 NY Slip Op 31559(U)

April 9, 2026

Supreme Court, Kings County

Docket Number: Index No. 506294/2023

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 9<sup>th</sup> day of April 2026.

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

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MEGED FUNDING GROUP CORP,

*Plaintiff,*

*-against-*

CREATIVE FREIGHT SERVICES LLC, WHITE RIVER SERVICES LLC, STONY LAKE PROPERTY INVESTMENTS LLC, GREAT LAKES DRIVE LLC, and GABRIELLE ANN FERSKI,

*Defendants.*

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**DECISION & ORDER**

Index No.: 506294/2023

Calendar No.: 22

Return Date: 1/22/2026

Motion Seq. No.: 2

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

**NYSCEF  
Papers Numbered**

Notice of Motion, Plaintiff's Affidavit, Plaintiff's Counsel's Affirmation, Plaintiff's Memorandum of Law, Statement of Material Facts, Affirmation of Service, and Supporting Exhibits.....22-33

*Upon the foregoing papers, the decision and order of the Court is as follows:*

This is a motion by plaintiff MEGED FUNDING GROUP CORP ("plaintiff") for an order granting plaintiff summary judgment on its complaint pursuant to CPLR 3212 (a) against defendants CREATIVE FREIGHT SERVICES LLC, WHITE RIVER SERVICES LLC, STONY LAKE PROPERTY INVESTMENTS LLC, GREAT LAKES DRIVE LLC, and GABRIELLE ANN FERSKI ("defendants"), jointly and severally, in the amount of \$85,293.94, with interest thereon at the rate of 9% per annum from February 22, 2023; and dismissing defendants' affirmative defenses and counterclaims pursuant to CPLR 3211 (b).

Plaintiff asserts that defendants breached a purchase agreement ("agreement") dated January 4, 2023. Pursuant to the agreement, plaintiff purchased \$116,000 of receipts from corporate defendants, CREATIVE FREIGHT SERVICES LLC, WHITE RIVER SERVICES LLC, STONY LAKE PROPERTY INVESTMENTS LLC, GREAT LAKES DRIVE LLC ("corporate defendant") and GABRIELLE ANN

FERSKI (“defendant guarantor”) for an upfront purchase price of \$80,000.00, less disclosed fees. Upon receiving the purchase price, corporate defendant was required to remit 25% of its receipts generated in the ordinary course of business until the purchased amount was remitted to plaintiff in full. There was no fixed term for repayment of the receipts purchased amount. Instead, the timing and duration of remittances depended on the corporate defendant’s actual generation of business receipts and the application of the purchased percentage to those revenues.

The purchase agreement required corporate defendant’s remittance of an “estimated daily amount” of \$1,364.71. However, these initial estimated payments were subject to a mandatory reconciliation based on actual revenues, which ensured that the specified percentage governed. If an event of default occurred, the uncollected receipts purchased amount became due. The agreement contained a guaranty executed by defendant Ferski, as owner of defendant CREATIVE FREIGHT SERVICES LLC. The guarantor guaranteed their good faith, truthfulness, and performance of all the representations, warranties, and covenants made in the purchase agreement.

Plaintiff asserts that it performed its obligations under the agreement by remitting the purchase price to corporate defendant. Upon receiving the purchase price, corporate defendant remitted only \$47,764.85 in receipts against the \$116,000.00 in purchased receipts. Corporate defendant never requested a reconciliation or adjustment under the agreement.

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 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.

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 motion for an order granting plaintiff summary judgment on its complaint pursuant to CPLR 3212 (a) against defendants, jointly and severally, in the amount of \$85,293.94, with interest thereon at the rate of 9% per annum from February 22, 2023, is DENIED; and it is further

ORDERED that plaintiff's motion dismissing defendants' affirmative defenses and counterclaims pursuant to CPLR 3211 (b) is also DENIED.

This constitutes the decision and order of the Court.

ENTER:



**Hon. Anne J. Swern, J.S.C.**  
**Dated: 4/9/2026**

KINGS COUNTY CLERK  
FILED  
2026 APR 14 A 9:43